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THE

# LIVES

OF

# THE LORD CHANCELLORS

AND

# KEEPERS OF THE GREAT SEAL

OF

# ENGLAND,

FROM THE EARLIEST TIMES TILL THE REIGN OF
KING GEORGE IV.

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BY

JOHN LORD CAMPBELL, A.M. F.R.S.E.

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# LIVES

OF THE

# LORD CHANCELLORS OF ENGLAND.

## CHAPTER CXXIX.

LIFE OF LORD CHANCELLOR HARDWICKE FROM HIS BIRTH TILL HE WAS APPOINTED ATTORNEY-GENERAL.

CHAP CXXIX.

Character of Lord Hardwicke.

WE now come to the man universally and deservedly considered the most consummate judge who ever sat in the Court of Chancery—being distinguished not only for his rapid and satisfactory decision of the causes which came before him, but for the profound and enlightened principles which he laid down, and for perfecting English Equity into a symmetrical science. He is at the same time to be honoured as a considerable statesman, co-operating powerfully for some years with the shrewdest minister this country produced during the eighteenth century, and after the fall of that chief being the principal support of his feeble successors in times perilous to the national independence, and to the reigning dynasty.

Difficulty in doing justice to it.

Yet the task of his biographer is by no means easy. Though he never said or did a foolish thing, he is not to be regarded with unmixed admiration. There were shades on his reputation which ought to be delineated. Personally, he does not much excite our interest or our sympathy. His career is not checkered by any youthful indiscretions or generous errors. He ever had a keen and steady eye to his own advantage, as well as to the public good. Amidst the aristocratic connections which he formed, he

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forgot the companions of his youth; and his regard for the middle classes of society from which he sprung, cooled down to indifference. He became jealous of all who could be his rivals for power, and he contracted a certain degree of selfishness and hardness of character, which excited much envy and ill will amidst the flatteries which surrounded him. To do justice to the qualities and actions of so extraordinary a person would require powers of discrimination and delineation, which I greatly fear I do not possess. However, after bespeaking the indulgence of my readers, I proceed,— resolved not to be sparing of praise, nor to shrink from censure, when I think the one or the other is deserved.

His origin.

It is curious to observe, that the three greatest Chancellors after the Revolution were the sons of attorneys, and that two of them had not the advantage of a university education. The illustrious Earl of Hardwicke was the son of a small attorney at Dover, of respectable character, but in very narrow circumstances. The family, though much reduced in the seventeenth century, is said anciently to have held considerable possessions in Wiltshire, of which county Thomas Yorke was thrice High Sheriff in the reign of Henry VIII. Philip, the father, was married to Elizabeth, daughter and coheir of Richard Gibbon of Rolvenden, in Kent.* They had three children who grew up—two daughters and a son. They were glad to marry one daughter to a dissenting minister, and the other to a tradesman in a country town.

His birth.

Philip the son, the subject of this memoir, was born at Dover on the first day of December, 1690. He never was at any school except a private one, kept at Bethnal Green by a Dissenter, of the name of Samuel Morland, who is said

His education.

* Gibbon, the historian, being of this family, has given us a very pompous account of it—showing how, being settled in "the great forest of Anderida," now the *Weald of Kent*, they, in 1326, possessed lands which still belong to them; that one of them was "Marmorarius," or architect to Edward III.; that they had for arms "a lion rampant gardant, between three schallop-shells, argent on a field azure;" and that they were allied to Jack Cade's Lord Say and Seale, "who had most traitorously corrupted the youth of the realm in erecting a grammar-school, who had caused printing to be used, and, contrary to the King, his crown, and dignity, had built a paper-mill,—talking of a noun and a verb, and such abominable words as no Christian can endure to hear."—*Misc. Works*, i. 4.

Lord Hardwicke, when Chancellor, erected a monument to his father and

to have been an excellent teacher. Here he won the good opinion of this worthy pedagogue, by displaying the quickness of parts and steady application which afterwards distinguished him through life.

When he had reached the age of fourteen, being noted as a "'cute lad," the father desired that he should be bred to his own profession of an attorney; but the mother, who was a rigid Presbyterian, very much opposed this plan. She expressed a strong wish "that Philip should be put apprentice to some *honester trade;*" and sometimes she declared her ambition to be that, breeding him a parson in her own religious persuasion, "she might see his head wag in the pulpit." However, her consent to Philip's legal destination was at last obtained on an offer being received from Mr. Salkeld, a very eminent London attorney, who had been many years Mr. Yorke's town agent, to take the boy as articled clerk without a fee.*

He is put as clerk to an attorney.

Philip Yorke, when transferred to the metropolis, exhibited a rare instance of great natural abilities, joined with an early resolution to rise in the world, supported by acquired good habits, and aided by singular good luck. A desk being assigned to him in Mr. Salkeld's office, in Brooke Street, Holborn, he applied to business with the most extraordinary assiduity, and, at the same time he

mother, with the arms of Yorke and of Gibbon impaled upon it, and with the following simple inscription, which he composed:

"Here lieth the body of PHILIP YORKE, Gent.,
who married Elizabeth, the only child
of Richard Gibbon, Gent.
They had issue
three sons and six daughters,
of whom one son and two daughters are surviving.
The other six are buried near this place.
He died June 18th, 1721, in the 70th year of his age.
Here lieth also the body of the said ELIZABETH,
Wife of the above mentioned Philip Yorke,
who died October 17th, 1727, in the 69th year of her age.
QUOS AMOR IN VITA CONJUNXIT
NON IPSA MORS DIVISIT."

The Gibbon arms are quartered in the Chancellor's shield in Temple Hall, and in Charles Yorke's in Lincoln's Inn Hall.

* The "Biographia Britannica" confounds this Mr. Salkeld with Serjeant Salkeld, author of the well-known "Reports," and erroneously supposes that Philip Yorke was sent to the Serjeant as a pupil when destined for the bar.

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*His diligence and desire of improvement.*

employed every leisure moment in endeavouring to supply the defects of his limited education. All lawyer's clerks were then obliged in a certain degree to understand Latin in which many law proceedings were carried on; but he, not contented with being able to construe the "Chirograph of a fine*," or to draw a "*Nar*†," took delight in perusing Virgil and Cicero, and made himself well acquainted with the other more popular Roman classics, though he never mastered the minutiæ of Latin prosody, and for fear of a false quantity, ventured with fear and trembling on a Latin quotation. Greek he hardly affected to be acquainted with.

*Greatly pleases his master.*

"By these means he gained the entire good will and esteem of his master; who observing in him abilities and application that prognosticated his future eminence, entered him as a student in the Temple ‡, and suffered him to dine in the Hall during the terms. But his mistress, a notable woman, thinking she might take such liberties with a *gratis clerk*, used frequently to send him from his business on family errands, and to fetch in little necessaries from Covent Garden and other markets. This, when he became a favourite with his master, and intrusted with his business and cash, he thought an indignity, and got rid of it by a stratagem, which prevented complaints or expostulation. In his accounts with his master, there frequently occurred, '*coach-hire for roots of celery and turnips from Covent Garden, and a barrel of oysters from the fishmonger's, &c.*,' which Mr. Salkeld observing, and urging on his wife the impropriety and ill housewifery of such a practice, put an end to it."§

*How he escaped from the tasks imposed upon him by his mistress.*

* The record of a fictitious suit, resorted to for the purpose of docking estates tail and quieting the title to lands.

† Familiar contraction of "*Narratio*," the "Declaration," or statement of the plaintiff's grievance or cause of action.

‡ "Novembris 29°. 1708°,
die et anno $p^{r}$dict.

$M^{r}$ Philippus Yorke filius et heres apparens Philippi Yorke de villa et port de Dover in Com. Kant. gen. admissus est in Societatem Medij Templi spealiter et obligatur una cum - - Et dat ꝑ fine - - - - - - } 04 . 00 . 00

— *Books of Middle Temple.*

§ Letter to Cooksey from "old man of the law, who knew him well." — *Cooksey*, p. 71.

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Friendships he formed while in the attorney's office.

There were at the same time in Mr. Salkeld's office several young gentlemen of good family and connections, who had been sent there to be initiated in the practical part of the law, — Mr. Parker, afterwards Chief Baron of the Exchequer, Mr. Jocelyn, afterwards Lord Chancellor of Ireland, and Mr. Strange, afterwards Sir John Strange, Master of the Rolls. With these Philip Yorke, though an articled clerk, associated on terms of perfect equality, and they had the merit of discovering and encouraging his good qualities.

He now received from time to time Latin letters from his former preceptor, to encourage him in his career, and to give him the news of Bethnal Green. In one of these, Morland, after dwelling with complacency on the talents of his pupil, confidently predicts the youth's future celebrity, and pronounces that to have been the most auspicious day of his life when the cultivation of so happy a genius was first committed to his charge: — "Non mirandum est si futuram tui nominis celebritatem meus præsagiat animus. Quas tantopere olim vices meas dolui, eas hodie gratulor mihi plurimum, cui tale tandem contigerit ingenium excolendum. Nullum unquam diem gratiorem mihi illuxisse in perpetuum reputabo, quàm quo te pater tuus mihi tradidit in disciplinam."*

* There are two of Morland's Letters to Yorke preserved in the British Museum, and I think they are worthy of being copied at length.

"Juveni Præstantissimo Philippo Yorkio, S. P. D.
Samuel Morlandus.

"Cum non alia potior se mihi sisteret ratio, qua demonstrarem tibi, quantis me perfuderint gaudiis, et intima quasi pertentârint Præcordia jucundissimæ tuæ, quibus me nuper beâsti Literæ, quam si celeriter rescriberem; Vix lecto egressus Calamum in manus arripui, quem nulla ingruentium Curarum vi et impetu prius excutiendum statui, quam responsum tibi quale quale exaravero: Quas tantopere olim vices meas dolui, eas hodie gratulor mihi plurimum, cui tale tandem contigerit ingenium excolendum. Nullum unquam diem gratiorem mihi illuxisse in perpetuum reputabo, quam quo te Pater tuus mihi tradidit in Disciplinam. Cui quanta insit Virtutis Indoles, quam inexplebilis bonarum Literarum sitis, quantum Ingenii acumen, cum Nemini magis perspectum sit quam mihi, non mirandum est, si futuram tui nominis celebritatem, meus præsagiat animus; nec fieri potest, quin tam raras optimi Adolescentis dotes depeream. Tum demum mihi placere videor, cum dulcissimam Dierum illorum memoriam revoco, quibus *Musis, et Apolline multo,* (quippe qui à Latere tuo nunquam se divelli patientur,) studia liberaliora, et amœniora simul tractavimus, iisque artibus et Disciplinis instruendas mentes curavimus, quibus instructi paratiores habilioresque ad res tum Privatas administrandas accedimus. Adest tamen mihi Voluptas nec minus viridis, cum ad ea Tempora præsensione quâdam

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He is introduced to Lord Chief Justice Par-

But the young man still had to struggle with many difficulties, and he probably would have been obliged from penury to go upon the roll of attorneys, rising only to be clerk to the magistrates at petty sessions, or perhaps to the dignity of town clerk of Dover, had it not been for his

provolat Animus, quibus eos honores consecutus fueris, et ad ea Munia admotus, quibus certissimum aditum merita tua aperient munientque; quibus nos etiam feremur inter eos fuisse, qui pro Mediocritate nostrâ contulimus aliquid, vel contulisse voluimus ad Juventutem tuam elegantioribus Literis imbuendam. Hæc non ita accepta velim, ut non amplius tibi studiis operam dandam credas, quæ jam acrius certe urgenda impellendaque existimo, si ad Lucem, et famam hominum profluere satagis. Caveas, oportet, ne remissis parum tempestive Laboribus, ex ipso, quem jam tenebas quasi portu, in altum rejectus pereas; ne flavescentibus ad Messem Campis, Torpore correptus, abjectâque, quæ sola restat, demetendi et in Horreum colligendi curâ, nullos tandem Lucubrationum tuarum fructus percipias. Ita comparatum est, ut in Ædificiis extruendis, ita etiam in studiis excolendis, ut quæ nondum perfecta et sarta tecta, ut ita dicam, relinquis, sponte dilabantur quotidie, et in pejus ruant. Quanto minimo, demum, citra Portum Intervallo consistas, præcipue cum adverso flumine nitaris, ad Locum, ex quo solvisti, statim referere; nec Portum attingere licebit, priusquam spatia omnia illa, affectis jam Viribus, et convulsis forsitan navigii compagibus, remensus fueris.

" Jampridem vides, Juvenis præstantissime, de Veniâ illa, quam narras, impetrandâ, non amplius tibi laborandum esse. Quantæcunque demum fuissent animi nostri offensiones, quæ nulla quidem fuerunt, eas omnes detersisset lepidissima tua Epistola, quam quoties lego (lego autem sæpissime) toties accensas, et in majus auctas sentio amoris illius flammas, quo te semper prosecutus sum: toties affectuum tuorum, quibus me complecti dignaris, fervoribus admotus, refici mihi, et mirificè levari videor.

" De rebus Publicis nihil accepi dignum, quod tecum communicarem. Hagdonia, proba illa vetula, quam noveras, ante octiduum ad plures ivit. Robertsii, vicini nostri, Filiam natu maximam Vinculis matrimonialibus intra breve illigandam ferunt. Non est e Pygmæorum Gente ille, quem Maritum sibi adscire voluit Puella illa primaria, licet nondum ad novempedalem altitudinem se extendat statura, qualem Nummulo parvulo à spectatore singulo solvendo ostendi dicunt his Diebus Londini. Robertsiæ Procus Faringdon appellatur, Mortonii uxoris Frater.

" Nondum mihi contigit videre, quam peritum se, et strenuum oratorem præstiterit Oxoniensis ille, qui Malburij Laudes e Rostris primum apud suos pronuntiatas jam Typis evulgavit. Sed nisi madida sit mihi memoria, læva quædam ominata est mea mens, cum Titulum legerem in Diurnis exscriptum. Cum primum accuratius excussero, te imprimis participem faciam mei Judicii, et literis exponam, quantum insit farinæ purioris, quantum furfuris Chartulis istis inspersum sit, ex nostrâ sententiâ.

" Vides quam amicè tecum agam, quamque te mihi unicum amicum, et habeam, et gratulor, qui nullum tecum loquendi finem faciam. Hoc verissime dixero me nunquam tantum Latini sermonis unâ vice, et currente calamo *de totâ meâ vitâ* illusisse chartis. Sed eo libentius indulsi et dextræ meæ et pennæ sua sponte properantibus, ut exemplo meo te hortarer, et excitarem ad crebras literas, et longas etiam ad me mittendas (ut prolixæ sint non timendum est, cum id nec per me nec per te quidem licebit).

" Ashleius, Papilio, Johnidius, dulcissima capita, tuis vestigiis insistentes, et ad altiora semper aspirantes, te officiosissime resalutant. Nihil restat, nisi scias velim, me Deum quotidie venerari suppliciter et flexis genibus, ut te ab omni tum corporis, tum mentis Labe sospitem præstet et tueatur; ut studiorum tuorum inceptorumque omnium Ducem Auspicemque se præstare dignetur.

accidental introduction to Lord Chief Justice Parker, which was the foundation of all his prosperity and greatness. This distinguished Judge had a high opinion of Mr. Salkeld, who was respected by all ranks of the profession, and asked him one day if he could tell him of a decent and intelligent person

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ker, and becomes law tutor to his sons.

Vale, et μὲ ἀγαπεῖν διατέλει. Dat. ex Ædibus Blinbeggarianis III. Non. Febr. Anno à Nato X^to^. MDCCVI.

"Salutem dicas velim Patri Matrique optimis. Sphalmata, leviora illa quidem, quæ tibi inopinanti excidisse videntur, proximis meis indicabo, quæ nisi per te steterit, non diu morabuntur."

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"PHILIPPO YORKIO suo S. P. D. SAMUEL MORLANDUS.

"CUM nullas à Nobis feriantibus nuper, et ab Herculeis plane, quibus cæteroquin distendor laboribus interquiescentibus literas acceperis; vix recusandum est, quin me in amicis colendis parum diligentem habeas. Quinetiam Falsi me reum peragis, idque Syngraphâ etiam, cum manu meâ scriptum possides, quo mecum apud Judicem agas, et omnes mei defendendi rationes extorqueas. Missâ ergo criminis diluendi curâ, et repudiato negotiorum Patrocinio, ad Humanitatem tuam tanquam ad Asylum confugio. Nec ab illâ tamen, nisi eximiam esse scirem, et cæterorum Hominum modulum supergressam, me Veniam consecuturum sperarem. Nescio certe, an recriminando effecturus sim, ut te mihi æquiorem Judicem præstes. Sed cum non solum centis Viminibus, sed asperrimis etiam senticetis manum injiciunt, quibus demergendis non alia enatandi spes ostensa est; ego etiam ad conquerendas injurias me confero. Scias ergo velim me graviter tulisse, quod Rus te furtim subduxisti, præcipuè vero, quod effigie tuâ manu Periti alicujus expressâ, non prius impertire dignatus es, ut quoties eam usurparem oculis, mentem meam non minus tui Desiderio, quam densis Curarum agminibus acerbatam solarer aut lenirem.

"Ineptire tibi forsan videbor, si pigriores nos factos ad scribendi officia Carriani operis expectatione dicam, et ab usu Latini sermonis abstinuisse, ut quam paucissima essent à nobis profecta Aristarchi illius Obelis confodienda. Quicquid id est, tantæ hujus Libri editionem moræ tenuere, quantæ celebratam apud Gallos Comœdiam, cui Titulus *Puella*, de quâ post diuturnam moram editâ hoc Disticho lusit aliquis, qui ingenio inter eos id temporis emicuit:

'Illa Capellani dudum expectata Puella
Jam post longa tamen Tempora venit Anus.'

Sed si nondum editur, certo certius appropinquat ut edatur Liber ille, quo Literatum orbem collustraturum, non tam jactat, quam minatur Autor Doctissimus; quoque errabundos Literatores ad rectas Latinitatis semitas revocaturum promittit, diligentissimus certè in Notationibus Verborum indagandis, utinam citra superstitionem. Quem tamen cum nondum videre licuit, orationem nostram quamvis incomptam non respues, castigatissimam futuram, cum Limæ istius Dentes subierit. Vix alius occurrit, qui de se, suisque scriptis, et acumine, magis honorificè sentire videtur, quam Cl. Carrius, nisi Gronovius Filius, cujus Vocem arrogantem, et præfidentem pace tuâ adjungam. 'Absit,' *inquit*, 'ut non alius sit fructus tot Laborum, qui ad Linguas illustrandas impensi sunt, nisi ut dici possit hanc vel illam hujus vel illius Vocis videri esse significationem; et non certo adfirmare possimus hanc esse, non illam.' Qui tamen Gronovius, ut apud Doctos constat, humani aliquid non semel passus est.

"Sed de Musis plus satis, quibus tantopere obstrepunt Belli et armorum fragores, ut ad Cantilenas eorum aures plane obsurduerint. Nec de Minervæ amplius, sed Insularum Arcibus expugnandis solliciti sunt omnium animi, quibus nisi brevi potiti fuerimus, multum de Laudibus, et existimatione Eugenii

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who might serve as a sort of law tutor for his sons,—to assist and direct them in their professional studies. The attorney eagerly recommended his clerk, Philip Yorke, who was immediately retained in that capacity, and, giving the highest satisfaction by his assiduity and his obliging manners, gained the warm friendship of the sons, and the weighty, persevering, and unscrupulous patronage of the father. He now bade adieu to the smoky office in Brooke Street, Holborn*, and he had a commodious chamber assigned him in the Chief Justice's house in Lincoln's Inn Fields. Released from the drudgery not only of going to Covent Garden market, but of attending captions and serving process, he devoted himself with fresh vigour to the abstruse parts of the law and to his more liberal studies. Farther, he took great pains to acquire the habit of correct composition in English,—generally so much neglected by English lawyers that many of the most eminent of them will be found, in their written "opinions," violating the rules of grammar, and without the least remorse constructing their sentences in

decedet apud Imperitum Vulgus, licet ii, quibus acrius Judicium, non videre possint quid ex vitio vertendum sit. Lætum tamen hujus obsidionis exitum speramus. Sin minus, concoquenda sunt hæc et magis luctuosa etiam, si Deo ita visum fuerit. Id præcipue optandum est, ut Desides jam à multis annis Germanos felix aliquis casus ad spes novas erigat, et ad bellum fortius capessendum, ne totam Molem Belli, et virium Flandriam convertant Hostes.

"Jucundissimus Palmerius literis suis me haud ita pridem compellavit, adeo doctis et elegantibus, ut tantum non præripuerit spem omnem imitandi, et Latine Scriptionis usu nobis interdixerit. Nos interim Studiorum suorum Adjutores advocat. Nescio autem quis operæ meæ usus sit in bonæ mentis palæstrâ tam feliciter desudantibus, nisi ut bene currentes voce insuper instigem. Ægrè tandem et invitus manum à Tabula retraho. Sed iniquæ Chartæ Limites monent, ut desistam. Parentibus tuis optimis obsequia mea vice tuâ ut deferas, rogo, et properatis literis certiorem facias, eum me Locum, non quem merui, sed magnopere cupio in affectibus tuis tenere. Datæ ex Ædibus Blinbeggarianis IV. Iduum Octobris anno Salutis MDCCVIII°."

These letters are directed —

"Juveni præstantissimo
PHILIPPO YORKIO,
at Mr. Salkeld's,
Brook Street,
near Holborn Bars, London."

— *Birch MS. Additional*, 4235. p. 112.

* "Three years he sat his smoky room in,
Pens, paper, ink, and pounce consumin'."

a slovenly manner, for which a schoolboy would be whipped.* The "Tatler" had done much to inspire a literary taste into all ranks. This periodical had ceased, but being now succeeded by the "Spectator," Philip Yorke "gave his days and nights to the papers of Addison."

He writes a paper in the "Spectator."

Although he never approached the excellence of his model, he was so far pleased with his own proficiency that he aspired to the honour of writing a "Spectator." Accordingly, with great pains, he composed the well-known Letter, signed "PHILIP HOMEBRED," and dropped it into the Lion's mouth. To his inexpressible delight, on Monday, April 12. 1712, it came out as No. 364., with the motto added by Steele:—

—— "Navibus atque
Quadrigis petimus bene vivere."

As a lawyer desirous of upholding our craft by all fair means, I should have been proud to have warmly praised this performance, but I am sorry to acknowledge that I cannot honestly object to the terms in which it was "vilipended" by Dr. Johnson.† I will, however, select one or two of the best passages, in the hope that the reader may form a more favourable judgment of it. — Having described a foolish mother, who is persuaded that "to chain her son down to the ordinary methods of education with others of his age, would be to cramp his faculties, and do an irreparable injury to his wonderful capacity," Mr. Philip Homebred, trying to imitate the manner of Addison, thus proceeds: — "I happened to visit at the house last week, and missing the young gentleman at the tea-table, where he seldom fails to officiate, could not, upon so extraordinary a circumstance, avoid inquiring after him. My Lady told me he was gone with his woman, in order to make some preparations for

* This undoubted fact shows strikingly the difference between speaking and writing; for some of those who did not at all know the division of a discourse into sentences, or the grammatical construction of a sentence, have been listened to with great and just admiration when addressing a jury, — without their inaccuracies and inelegancies being discovered. Erskine could compose with accuracy and elegance, but this could be said of very few of his contemporaries.

† "He would not allow that the paper (No. 364.) on carrying a boy to travel, signed *Philip Homebred*, which was reported to be written by the Ld. Ch. Hardwicke, had merit. He said, 'it was quite vulgar, and had nothing in it luminous.'" — Boswell's *Life of Johnson*, vol. vi. p. 152.

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their equipage; for that she intended very speedily to carry him to travel. The oddness of the expression shocked me a little; however, I soon recovered myself enough to let her know that all I was willing to understand by it was, that she designed this summer to show her son his estate in a distant county in which he had never yet been. But she soon took care to rob me of that agreeable mistake, and let me into the whole affair.". . . . "When I came to reflect at night, as my custom is, upon the circumstances of the day, I could not but believe that this humour of carrying a boy to travel in his mother's lap, and that upon pretence of learning men and things, is a case of an extraordinary nature, and carries on it a particular stamp of folly. I did not remember to have met with its parallel within the compass of my observation, though I could call to mind some not extremely unlike it. From hence my thoughts took occasion to ramble into the general notion of travelling, as it is now made a part of education. Nothing is more frequent than to take a lad from grammar and taw, and under the tuition of some poor scholar, who is willing to be banished for thirty pounds a year and a little victuals, send him crying and snivelling into foreign countries. Thus he spends his time as children do at puppet-shows, and with much the same advantage, in staring and gaping at an amazing variety of strange things; strange, indeed, to one who is not prepared to comprehend the reasons and meaning of them; whilst he should be laying the solid foundations of knowledge in his mind, and furnishing it with just rules to direct his future progress in life, under some skilful master of the art of instruction."—Here we have good sense and grammatical language, but does the writer give us "thoughts that breathe, and words that burn?"—has he succeeded in attaining "an English style, familiar but not coarse, and elegant but not ostentatious?" Had he taken to literature as a trade, he would have had poor encouragement from Lintot and Cave, and he would hardly have risen to the distinction of being one of the heroes of the Dunciad. I fear me it will be said that a great lawyer is made *ex quovis ligno*, and that he who would starve in Grub Street from his

dulness,—if he takes to Westminster Hall, may become "the most illustrious of Chancellors."

I have no means of knowing how this paper was received at the time.—It is said that our law student wrote another, which was published in a subsequent volume, but which, probably, had less applause, for he did not distinctly own it, and his family could never identify it. He wisely adhered to juridical studies, and laboured more and more assiduously to qualify himself for his profession.

His preparations for the bar.

He now regularly attended the courts in term time, taking notes of the arguments and judgments,—which in the evening he revised and digested. He likewise attended to oratory, and acquired that close and self-possessed manner of speaking before the public by which he was afterwards distinguished. I do not find any thing expressly said about his politics in early life, but, from his father's connection with the Dissenters, he was probably bred in the Low Church party. He, no doubt, was a zealous Whig when patronised by Lord Parker; and I do not find any charge of inconsistency ever brought against him.

He is called.

The house of Brunswick was actually on the throne prior to his appearance in public life. He was called to the bar in Easter Term, 1715, being then in his twenty-third year.*

His progress was more rapid than that of any other *débutant* in the annals of our profession. He was immediately pushed by old Salkeld, who himself had many briefs to dispose of, and who had great influence among his brother attorneys. Several young men with whom he had formed an intimacy while in his clerkship, now being "upon the roll," were perhaps of still greater use to him.

* "Parliament tent. 6° die Maij, 1715.—Mr Simpson T. proposed by Mr Jauncy, Mr York P. proposed by Mr Mulso, Mr fforster J. proposed by Mr Harcourt, Mr Newton J. proposed by Mr Offley, Mr Idle J. proposed by Mr Avery, Mr Brabant H. proposed by Sr William Whitelock, and Mr Sherwood J. proposed by Mr Attorny Genall, for the Degree of the Utter Barr."

On the 20th of the same month Mr. Philip Yorke was admitted to a set of chambers.

The following is the only other entry relating to him in the Books of the Middle Temple:

"Ad Parliament. tent. 10mo ffebij, 1720mo.—It is ordered—That Sr Philip Yorke, Knt, his Majties Sollr Generall, be called up to the Bench of this Society in order to his Reading."

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He rapidly gets into business.

He began his practice in the Court of King's Bench, where he enjoyed the marked favour of Lord Chief Justice Parker. It soon happened that he had to argue a special case upon an important and intricate point of law. The judgment of the Court was with his client, and he received high compliments from the Chief Justice for the research, learning, and ability which he had displayed.* From that day forth he was much employed in the "special argument line," although it was some years before he acquired the reputation of a "leader."

Goes the Western Circuit.

By Mr. Salkeld's advice, he chose the Western Circuit, where, although he had no natural connection,—by means which must have excited some jealousy and distrust, but which could not be proved to be incorrect, he was suddenly in good junior business at every assize town. About two years after his start Mr. Justice Powis, a foolish old Judge, went the Western Circuit, and, surprised to see so young a man in every cause, was anxious to know how he had got on so rapidly. It has been said since, that early success on the Circuit must arise from "sessions, a book, or a miracle." The practice of barristers practising at Quarter Sessions had not then begun, and, miracles having ceased, Powis thought that young Yorke must have written some law book, which had brought him into notice. The bar dining with the Judges at the last place on the Circuit, and the party being small on account of so many having taken their departure for London, before the toast of "Prosperity to the Western Circuit," and "*Quinden. Pasch.*" were given †, there was a pause in the conversation, and Mr. Justice Powis, addressing the flourishing junior, who was sitting nearly opposite to him, said, "Mr.

* We are not told how he received these compliments. He was probably pleased and grateful; but I once heard a young barrister, who entertained a very high, and perhaps somewhat excessive, opinion of his own merits, say, under similar circumstances, "I think the Judges use a very great liberty in presuming to praise me for my argument."

† It would appear that the present custom then prevailed of the Judges, when the barristers dine with them, giving as a toast when the party is to break up, "Prosperity to the O. Circuit," except that, at the last place on the Spring Circuit, they afterwards give "*Quinden. Pasch.*" being the first return of Easter Term; and on the Summer Circuit, "*Cras. Animarum*," being the first return in Michaelmas Term; which is as much as to say, "To our next merry meeting in Westminster Hall."

Yorke, I cannot well account for your having so much business, considering how short a time you have been at the bar; I humbly conceive you must have published something; for, look you, do you see, there is scarcely a cause before the Court, but you are employed in it, on one side or other. I should, therefore, be glad to know, Mr. Yorke, do you see, whether this is the case?"—*Yorke.* "Please ye, my Lord, I have some thoughts of publishing a book, but, as yet, I have made no progress in it." The Judge, smiling to think that his conjecture was not quite without foundation, became importunate to know the subject of the book, and Yorke, not being able to evade his inquiries, at last said, "I have had thoughts, my Lord, of doing Coke upon Littleton into verse; but I have gone a very little way into it."—*Powis.* "This is something new, and must be very entertaining; and I beg you will oblige us with a recital of a few of the verses." Mr. Yorke long resisted, but finding that the Judge would not drop the subject, bethought himself that he could not get rid of it better than by compounding a specimen of such a translation, something in the Judge's own words, and introducing the phrases with which his Lordship was in the habit of interlarding his discourse upon all occasions, let the subject be grave or gay. Therefore, accompanying what he intended to say with some excuses for not sooner complying with the Judge's request, he recited the following verses, as the opening of his translation:—

His translation of Coke upon Littleton into verse.

"He that holdeth his lands in fee
Need neither to quake nor to quiver,
I humbly conceive; for look, do you see,
They are his and his heirs for ever." *

A knavish speech sleeps in a foolish ear. Although all others present perceived the jest, the learned Judge was not struck by the peculiarity of the diction, and was so much convinced that this was a serious attempt to impress upon the youthful mind the great truths of tenures, that meeting Mr. Yorke a few months afterwards in Westminster Hall, he

* The first section of Littleton in prose says—"Tenant in fee simple is he which hath lands or tenements to hold to him and his heirs for ever."

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inquired "how he was getting on with the translation of Littleton?"*

His marriage.

The supposed translator was now so prosperous, that he thought he might not improperly contract a matrimonial alliance, and in the object of his choice he showed his usual prudence and good sense. This was a gay widow with a good jointure, the niece of Lord Somers, and the niece by marriage of Sir Joseph Jekyll, the Master of the Rolls, at whose house in Chancery Lane he became acquainted with her.† Yorke was a remarkably handsome young man, and his addresses were well received by the lady; but she referred him to her father, Mr. Cocks, a Worcestershire Squire. Fortified by a letter of introduction from Sir Joseph, who encouraged the match, he repaired full of confidence to the residence of his intended father-in-law. The old gentleman received him politely, but learning the object of his visit asked him for his *rent roll*, and Mr. Lygon, his daughter's first husband, having had a very ample one, was surprised to hear that all Mr. Yorke's estate consisted of "a perch of ground in Westminster Hall."

* Powis seems then to have been the butt of the profession, having had a leaden chain of lineal successors down to the present time. Duke Wharton celebrates him in the once popular lines:

"When honest Price shall trim and truckle under,
*And* POWIS *sum a cause without a blunder;*
When Page one uncorrupted finger shows,
And Fortescue deserves another nose,
Then shall I cease my charmer to adore,
And think of love and politics no more."

Yet the simplicity of the Judge in believing in the metrical translation of Littleton is not so great as unlearned readers may suppose. My professional brethren have all read and tried to recollect "The Reports of Sir Edward Coke, Knt. in verse." This volume was first printed in 1742, and a new edition of it was published so lately as 1825. It professes, in two lines, with the name, to give the point decided in every case which Coke has reported: *e. g.*

"*Archer*, if he for life infeoff in fee,
It bars remainders in contingency."
"*Shelley*, whose ancestors a freehold take,
The words (his heirs) a limitation make."
"*Monopolies* granted by King are void,
They spoil the trade in which the youth's employ'd."

When I was in a special pleader's office, a brother pupil thus began to versify "Tidd's Practice:" —

"Actions are all, and this I'll stick to,
*Vel ex contractu vel delicto.*"

† Her maiden name was Cocks, she being the daughter of Charles Cocks, Esq., by a sister of Lord Somers.

However, in answer to a letter to the Master of the Rolls, asking how he could think of introducing into the family a young man incapable of making a settlement, his Honour so strongly represented the brilliant prospects of the rising lawyer, that the required consent was given, and the union took place,—which turned out most auspicious, for the married couple lived together to old age in uninterrupted affection and harmony, sharing the most wonderful worldly greatness, and seeing a numerous family of sons and daughters grown up — all well behaved and prosperous, and as fully fixed among the high aristocracy as if they had descended from companions of the Conqueror. Mr. and Mrs. Philip Yorke began their married life in a very small house near Lincoln's Inn, the ground floor of which served him for an office, and saved him the expence of chambers in the Temple, then considered by him a very great object.

May 12. 1718. He practises in the Court of Chancery.

In the year 1718, upon the resignation of Lord Cowper, Chief Justice Parker, shortly after created Earl of Macclesfield, received the Great Seal, and Mr. Yorke transferred himself to the Court of Chancery, still continuing to go the Western Circuit.* Equity business soon flowed in upon him — partly from his own merit, and partly from the favour of his patron, testified in a manner which gave mortal offence to the seniors at the bar. Serjeant Pengelly, in particular, was so disgusted at frequently hearing the Chancellor observe — "*what Mr. Yorke said has not been answered,*" that he one day threw up his brief, saying in a loud voice, "I will no more attend a Court where I find Mr. Yorke is not to be answered." Some have gone so far as to ascribe Lord Macclesfield's subsequent ruin to this favouritism, asserting that "Serjeant Pengelly's resentment, joined with that of others in the same situation, brought upon the Chancellor that investigation of his private management, and the abuses committed or connived at by him in his appointment of the officers of his Court, which terminated in his impeachment and conviction." †

Lord Macclesfield's excessive partiality for him.

* For more than half a century afterwards the Chancellor's sittings were so arranged as to allow the counsel practising in his Court to go circuit, and Equity men had the advantage of keeping up their common law learning.

† Cooksey, 72. Serjeant Pengelly was certainly the most bitter manager of the impeachment.

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However, there can be no doubt that the discontent of the old Chancery pleaders arose very much from the superior talent of the young common lawyer, whose invasion was so formidable to their empire. Most of them had been contented to pick up a knowledge of Chancery practice from experience, referring *pro re natâ* to what was to be found on the subject in the Reports and Abridgements; but he entered upon a systematic course of study, qualifying him to be a great advocate or a great judge in the Court of Chancery — tracing the equitable jurisdiction of the Court to its sources, and thoroughly understanding all the changes it had undergone.

He distinguishes himself there.

In the case of *Rex* v. *Hare and Mann* *, in which Sir Robert Walpole's family was interested, he had an opportunity, of which he fully availed himself, of showing that he was deeply skilled in the history and practice of this tribunal, and he raised his reputation as high among the Solicitors here as it had been among the Attorneys in the King's Bench. In his celebrated letter to Lord Kames, on the distinction between Law and Equity, written many years after, he speaks with much complacency of his argument on this occasion, and insinuates that it contributed greatly to his elevation. "It was," says he, "when I was a very young advocate, before I was Solicitor General, but it is correctly reported; for I remember Sir John Strange borrowed my papers to transcribe, so that the faults in it are all my own. In arguing that cause, which turned upon a critical exception to the return of a writ of *scire facias* in Chancery, I found, or at least fancied it to be necessary to show that all the various powers of that Court were derived from, or had relation to the Great Seal, and I endeavoured to prove that the equitable jurisdiction exercised by the Chancellor took its rise from his being the proper officer to whom all applications were made for writs to ground actions at common law, and from many cases being brought before him, in which that law would not afford a remedy, and thereby being induced through necessity or compassion to extend a discretionary one."†

* 1 Strange, 146., Feb. 1719, 5 Geo. 2.

† This very learned argument arose out of a seemingly very trifling objection

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He is returned to parliament.

Lord Macclesfield now determined on the first vacancy to make a resolute effort to have his protégé appointed a law officer of the Crown, notwithstanding the shock such a promotion might give to aged Serjeants who had been in vain expecting advancement ever since the coming in of King William; and with this view he prevailed upon the Duke of Newcastle, who had immense borough interest, to return him to the House of Commons for Lewes.

Parliament met on the 11th of November after Yorke was elected, and with the exception of the Christmas recess, continued sitting till he went on the Spring Circuit in the beginning of March; but I cannot find that he opened his mouth in this interval, and it is probable that he prudently remained silent; for the only measure of public interest then debated in the House of Commons was Sunderland's Peerage Bill, on which the Whigs were divided, and it might have appeared presumptuous for a young lawyer to give any opinion.*

Nov. 1719. His prudence in not speaking.

Before he had made his maiden speech in parliament,— the folly as well as the favour of others working for his advantage,— an opportunity most unexpectedly arose for promoting him in his profession. The Attorney and Solicitor General, though not free from personal dislikes and jealousies, have almost always preserved ostensibly a mutual good understanding, and have cordially co-operated in the public service.

to a writ of *scire facias*, which required the defendant "to appear in Cancellariâ nostrâ in Octobris, &c. ubicunque tunc fuerit." Objection, that it ought to have been "ubicunque eadem Cancellaria tunc foret in Angliâ," on the ground that since the Union with Scotland there was only one Great Seal for Great Britain; that the Chancery might be held in Scotland; that for matters arising in England suitors could not lawfully be summoned to Scotland; and therefore that this return, which might call the defendant into Scotland, was bad. — *Yorke*, for the defendant, gave a learned history of the jurisdiction of the Court of Chancery, contending that it arose entirely from the Great Seal; and as the Great Seal was the Great Seal of Great Britain, the Chancery had become the Chancery of Great Britain. But Lord Macclesfield said, that "although the Act of Union had made the Great Seal the Great Seal of Great Britain, it had not made the Chancery so. The powers of the Chancery as a Court are over private property; and the articles of Union preserving to each country its municipal jurisdictions, the English Court of Chancery could not be held in Scotland, although the Great Seal might be carried to Scotland, and for some purposes used there." — 1 Str. 158.

* A list of the majority and of the minority was published, but his name does not appear in either. — 7 Parl. Hist. 624.

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But Mr. Lechmere and Sir William Thompson, the then Attorney and Solicitor General, hated each other so intensely that they had several very indecent quarrels in private causes at the bar, and in the transaction of official business. Their enmity was whetted by a sordid competition,—"which of them should be most resorted to in granting charters of incorporation to Joint Stock Companies?" Now was raging the fever of speculation throughout the nation, of which the "South Sea Bubble" was a symptom, and companies were formed which, both for object and means, equalled in extravagance any thing witnessed in our own times. They brought a great harvest to the law officers of the crown, but of this Lechmere, being more popular, and supposed to have more influence, carried off by far the largest share. Thompson at last, openly in the House of Commons, preferred a charge against him of corruptly taking excessive fees and recommending improper grants. The charge was indignantly denied by Lechmere, who said that "he had the honour to be a Privy Councillor, Chancellor of the Duchy of Lancaster, Attorney General, a Member of that House, and more than all, *a gentleman*; that such an accusation could not therefore but fall upon him more heavily; that he defied all the world—the worst and bitterest of his enemies—to prove him guilty of corrupt or unwarrantable practices, and that he demanded an immediate inquiry." Thompson undertook to make good the accusation, and a committee sat to hear the evidence. It appeared that the Attorney General's clerk had been rather eager to make joint stock companies "pay handsomely," but there did not rest even a passing shadow of suspicion on his master; whereupon it was unanimously resolved, "that the informations of Sir William Thompson were malicious, scandalous, and false, and that the Right Honourable Nicholas Lechmere had discharged his trust in the matters referred to him with honour and integrity." Thompson was immediately dismissed from his office of Solicitor General.* Lechmere tried to procure the appointment for an attached friend of

The Solicitor General accuses the Attorney General of corruption.

The Attorney General is acquitted and the Solicitor General dismissed.

* However, he was afterwards made Recorder of London and a Baron of the Exchequer.

his own, that he might no more be exposed to such squabbles; but the Lord Chancellor claimed the appointment as his patronage, — and he was at this time all powerful, both with the King and the minister.

A.D. 1720. Yorke is appointed Solicitor General, and knighted.

Philip Yorke had joined the Western Circuit during this controversy, little thinking that he had any personal interest in it, but while he was attending the assizes at Dorchester, he received the two following letters. The first was from the Lord Chancellor, and was directed to "Philip Yorke, Esq., Counsellor at Law, M.P., at the Assizes at Dorchester."

"Sir,

"The King having declared it to be his pleasure that you be his Solicitor General in the room of Sir Wm. Thompson, who is already removed from the office, I with great pleasure obey his Majesty's commands; to require you to hasten to town immediately upon receipt hereof, in order to take that office upon you. I heartily congratulate you upon this first instance of his Majesty's favour, and am with great sincerity,

"Sir,

"Your faithful and obedient Servant,

"PARKER, C."

The second was from Mr. Secretary Craggs.

"Dear Sir,

"You will be informed from other hands of what has happened between the Attorney and Solicitor General. In the squabble the latter has lost his employment, and the first, I believe, will not succeed in his recommendation of Mr. Denton to be his successor, for I believe the King has resolved to appoint you, which I am glad of, for his service, and for my particular satisfaction: Who am entirely,

"Your most faithful Servant,

"J. CRAGGS.

"Cockpit, March 17. 1719 [1720]."

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Mr. Yorke on reading these letters, after receiving the hearty congratulations of his brother circuiteers, who rejoiced sincerely in the elevation of such a formidable competitor, returned his briefs and set off post for London. On the 22d of March he was sworn in Solicitor General before Lord Macclesfield, and a few days after, on being presented by him to the King, he received the honour of knighthood.

Envy created by this appointment.

With the exception of the members of the Western Circuit, the profession considered Sir Philip's appointment a very arbitrary act. He was only twenty-nine years of age, and had been little more than four years at the bar. He had displayed great talents, but Wearg and Talbot, who were considerably his seniors, and had always deserved well of the Whig party, were men of distinguished reputation, and qualified to do credit to any office in the law, however exalted. Others of inferior merit were disappointed, and the blame being all laid on the Lord Chancellor, the resentment which he had before excited by his partiality for the tutor of his sons was greatly exasperated.

At first not employed in the Court of Chancery.

It is said that even the attorneys and solicitors looked askance at the new law officer, though disposed to be proud of the elevation of a gentleman so closely connected with them. Very much run after as a junior, he as yet had not got into any leading business, and they were alarmed by seeing him with so little experience suddenly put over the heads of the gentlemen with silk gowns, whom they had been accustomed to employ. When Easter Term came round and he took his place within the bar in the Court of Chancery, he was left out of most of the new causes which came on to be heard, and some of his discontented rivals were sanguine enough to hope that his premature elevation had ruined him for ever. But by the exertions of his personal friends among the solicitors, by being supposed to have "the ear of the Court," by his own great talents, by his indefatigable industry, by the gentleness of his manners, and by the insinuating complacency of his address, he rapidly overcame these prejudices, and was retained in every suit.*

Soon in any cause.

* One account of his *début* as Solicitor General says, "The storm which was raised by his premature promotion fell wholly on his patron." — *Cooksey*, 73.

His acceptance of office having under the recent statute vacated his seat in the House of Commons, he was re-elected for Lewes without opposition. He afterwards sat for Seaford, being always returned without trouble or expence,—which was considered by some of his contemporaries as an instance of his luck, and by others as a proof of his management, in having so effectually insinuated himself into the good graces first, of Lord Macclesfield, and then of the Duke of Newcastle. But for some years to come his name is never mentioned in printed parliamentary debates, and we are left in great doubt as to the part he acted in the House of Commons.

He is re-elected for Lewes.

It happened in little more than a year, that Lechmere retiring from the bar with a peerage, there was a vacancy in the office of Attorney General, and some supposed that the Chancellor would recklessly thrust his juvenile favourite into it although only thirty years of age; but prudence prevailed, and it was filled up with the experienced Sir Robert Raymond, afterwards Lord Chief Justice of the King's Bench.

May, 1720. Sir R. Raymond Attorney General.

Sir Philip Yorke continuing Solicitor General, first gained great public applause on the trial of Christopher Layer for high treason in conspiring to bring in the Pretender. The prisoner, after being ably defended by counsel, himself spoke so clearly and ingeniously in his own defence as to make a considerable impression on the jury, and to endanger the conviction—then considered of the last consequence not only to the safety of the ministry, but of the family on the throne.

The Solicitor General rose to reply when it was late at night, and delivered a speech between two and three hours long, which, during the whole of that time, rivetted the attention of all who heard it, and was most rapturously praised as a fine specimen of juridical eloquence. Certainly it is what is technically termed a "hanging speech"—very quiet and dispassionate; seemingly candid, and even kind to the accused; but in the most subtle manner bringing forward all the salient points of the evidence against him—and, by insinuation and allusion, taking advantage of the prepossessions of the Jury. He thus concluded: "It has been

His speech on the prosecution of Layer for high treason.

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said, indeed, that he is but an inconsiderable man — of no rank or fortune fit to sustain such an undertaking. That observation may be true; but since it is plain that he did engage in it, this with other things clearly proves that he was set on work and supported by persons of more influence. And, gentlemen, this is the most affecting consideration of all. But I would not even in this cause, so important to the King and to the State, say any thing to excite your passions: I choose rather to appeal to your judgments; and to these I submit the strength and consequence of the evidence you have heard. My Lord, I ask pardon for having taken up so much of your time. I have only farther to beg, for the sake of the King, for the sake of the prisoner at the bar, and for the sake of myself, that if through mistake or inadvertency I have omitted or misrepresented any thing, or laid a greater weight on any part of the evidence than it will properly bear, your Lordship will be pleased to take notice of it, so that the whole case may come before the Jury in its just and true light." The conviction was certainly according to law, and if Layer's head had been immediately placed on Temple Bar, his execution, though lamentable, might have been thought a necessary severity — but all concerned in the prosecution and the punishment incurred and deserved obloquy — by the delay interposed with a view to elicit from the prisoner the accusation of others — and by his execution long after the verdict, when he had disappointed the hope of further disclosures. *

* 16 St. Tr. 319.

# CHAPTER CXXX.

## CONTINUATION OF THE LIFE OF LORD HARDWICKE TILL HE WAS APPOINTED LORD CHANCELLOR.

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A.D. 1723.

He is promoted to be Attorney General.

An excellent law-officer.

On the 31st of January, 1723, Sir Robert Raymond being promoted to be Chief Justice of the King's Bench, Sir Philip Yorke, with general applause, succeeded him as Attorney General. This situation he held above thirteen years, exhibiting a model of perfection to future law officers of the crown. He was punctual and conscientious in the discharge of his public duty, never neglecting it that he might undertake private causes, although fees were supposed to be particularly sweet to him, and, having felt the ills of penury, he was from the commencement to the close of his professional career eager to accumulate wealth. Considering this propensity, he had likewise great merit in resisting the temptation to which others have yielded of accepting briefs in private causes, when he could not be present at the hearing of them, or could not do fair justice to the client who hoped to have the benefit of his assistance. I may likewise mention, that although he was afterwards supposed to have become stiff and formal in his manners, — while he remained at the bar he was affable and unassuming, courteous to his brethren of longer standing, making himself popular with the juniors, and trying to soften the envy excited by his elevation. In parliament he never displayed any impatience to gain distinction, but he was regular in his attendance, and he was always ready to render fair assistance to the government, and to give his opinion on any legal or constitutional question for the guidance of the House. Without being a "prerogative lawyer," he stood up for the just powers of the Crown, and without being a "patriot," he was a steady defender of the rights and privileges of the people.

His mode

As public prosecutor in Revenue cases in the Exchequer,

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of conducting Excise prosecutions in the Exchequer.

he is universally lauded. "Though advocate for the Crown, he spoke," says one contemporary, "with the veracity of a witness, and the impartiality of a judge." When defending Walpole's Excise scheme against the misrepresentations of its opponents, he not ungracefully appealed to his own practice in prosecuting those who attempted to defraud the revenue and to injure the fair dealer; pronouncing a eulogy upon himself to which, we are told, "the whole House assented with universal applause."

Ex-officio informations for libel.

He was not so fortunate in his prosecutions for libel. In his time sprang up the controversy respecting the rights of juries, which was not settled till the close of the eighteenth century. He contended for the doctrine, that the jury were only to decide upon the sufficiency of the evidence of publication, and upon innuendoes; *i. e.*, whether particular words or abbreviations in the alleged libel had the meaning imputed to them by the indictment or information, as, whether "the K——g" meant "our Sovereign Lord the King;" but that the lawfulness or criminality of the writing prosecuted was pure matter of law for the opinion of the Court. The Judges coincided with him in their directions, but juries were sometimes rebellious. The obnoxious journal of that day was the "Craftsman," conducted by Bolingbroke, Pulteney, and the principal leaders of the opposition to Sir Robert Walpole. Sir Philip Yorke succeeded in obtaining a conviction in the case of the famous Hague letter, written by Bolingbroke*; but he was foiled in his prosecution of a subsequent violent attack upon the Government, supposed to be from the pen of Chesterfield, for though the Chief Justice laid down the same law, and there could be no doubt about publication or innuendoes, the jury, very much approving of the sentiments of the supposed libel, and thinking them not only innocent but laudable, found a general verdict of *not guilty*. It was then that Pulteney composed his famous ballad, with the oft-quoted stanza,—

* 17 St. Tr. 625.: and see a very amusing account of this trial by Lord Mansfield, 21 St. Tr. 1037. "There was a great concourse of people; it was a matter of great expectation, and many persons of high rank were present to countenance the defendant."

"For Sir Philip well knows,
That his innuendoes
Will serve him no longer
In verse or in prose;
For twelve honest men have decided the cause,
Who are judges alike of the facts and the laws." *

But, considering how the law of libel had been laid down by Lord Holt and other Judges deemed constitutional, I believe that Sir Philip is to be deemed forbearing in instituting prosecutions against the press, and mild in conducting them. †

He writes a pamphlet on the judicial functions of the Master of the Rolls.

While Attorney General, he was not entirely absorbed in the routine of official and professional business. He contrived to have leisure, not only to attend to the literature of the day, but when occasion required, to investigate thoroughly, by a reference to rare books and ancient records, questions respecting our judicial history. In consequence of some clashing of jurisdiction between Lord King as Chancellor, and Sir Joseph Jekyll as Master of the Rolls, he wrote and published "A Discourse of the Judicial Authority belonging to the Office of Master of the Rolls," which is full of recondite learning, and on which the declaratory act was passed, placing the jurisdiction of "His Honour" on its present footing. ‡

A.D. 1723. He supports bill for the banishment of Atterbury.

His first appearance as Attorney General in the House of Commons, was in conducting the bill of pains and penalties against Bishop Atterbury, by which that learned and factious prelate was banished for life, and it was made high treason to correspond with him. There was no difficulty in

* The two last lines were misrepresented in the Dean of St. Asaph's case by Lord Mansfield; who, to suit his purpose, or from lapse of memory, said Pulteney had admitted that "libel or no libel?" was a question only for the Court, by saying in his ballad —

"For twelve honest men have decided the cause,
*Who are judges of fact, though not judges of laws.*"

—21 St. Tr. 1037.

† Lord Chesterfield thus speaks of him as a law officer of the Crown: "Though he was Solicitor and Attorney General, he was by no means what is called *a prerogative lawyer*. He loved the constitution, and maintained the just prerogative of the Crown; but without stretching it to the oppression of the people. He was naturally humane, moderate, and decent; and when by his employments he was obliged to prosecute state criminals, he discharged that duty in a very different manner from most of his predecessors, who were too justly called *the blood-hounds of the Crown*."

‡ 3 Geo. 2. c. 30.; 3 Bl. Com. 450.

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producing a moral persuasion of the existence of the plot to bring in the Pretender on which it was founded, but no ingenuity could justify the departure from the rules of evidence established for the safety of the subject, or an attempt to punish, by a ministerial majority, where there must have been an acquittal before the regular tribunals of the country. The Attorney General had to carry through similar bills against Plunket and Kelly, implicated in the conspiracy. In support of the last, he is said to have been particularly energetic, but no fragment of his speech is preserved.*

His behaviour on the impeachment of Lord Macclesfield.

In the year 1725, Sir Philip was placed in a very disagreeable predicament by the impeachment of his patron — originating, as some thought, in the Chancellor's violent predilection for Sir Philip himself. He has been accused of heartlessness and ingratitude on this occasion, and of standing a silent and unconcerned spectator of the distress of the man to whom he owed all his advancement in life.† But I think the charge is unjust, or greatly exaggerated. If, by resigning his office, he could have become the strenuous defender of his patron, with the remotest chance of saving him, it would have been his duty to have made the attempt. But the current ran so strong against the denounced "trafficker in judicial offices and robber of widows and orphans," that to stem it was impossible,—and useless self-immolation could not be demanded from any one. The Commons were almost unanimous for the impeachment, although some thought there ought to have been a previous inquiry by a committee. When there appeared

* See 3 Parl. Hist. 54—293.; 16 St. Tr. 323—693. Swift tried to revenge his friend Atterbury by ridiculing this plot in "Gulliver's Travels," published soon after: "Another professor showed me a large paper of instructions for discovering plots and conspiracies against the government. He advised great statesmen to examine into the diet of all suspected persons, 'their time of eating, upon which side they lay, with what hand,' &c.;" and then he describes a certain method "by an examination of the *ejecta*, of ascertaining whether the design of the traitor be to murder the King, or only to raise an insurrection, or to burn the metropolis."—*Voyage to Laputa*, ch. vi. Kelly having been confined thirteen years in the Tower, was allowed to make his escape. Atterbury, it is well known, died in exile; and when his body came over for interment, the coffin was opened at the Custom House, "lest it should be made the medium of a treasonable correspondence, contrary to the act of parliament."

† Cooksey, 73.

an opening for embarrassing the proceeding by a motion to recommit the articles of impeachment, Sir Philip Yorke strenuously, though ineffectually, supported it against Serjeant Pengelly, and Sir Clement Wearg, the Solicitor General.

On the appointment of managers to conduct the prosecution at the bar of the House of Lords, the Attorney General ought to have been of the number, but he begged to be excused on account of the private friendship subsisting between him and the late Lord Chancellor; and we are told that he had great "difficulty in obtaining his request."* It is not easy to specify any other step he could have taken to show his sympathy. Yet I confess, I should have been gratified to have heard that he tried to turn the tide of public opinion, by a pamphlet "On the Sale of the Office of Master in Chancery, proving that it has been at all times transferred for a valuable consideration," or that he had made one gallant speech in his place in the House of Commons, for the man who had such claims to public applause, and who had drawn down ill will upon himself by befriending the friendless. Surely Sir Robert Walpole, who was not without generosity of sentiment as well as good nature (although he was anxious to rescue his government from the imputation of screening high delinquency), would not have discarded his Attorney General for one solitary indiscretion. At all events, it would have much consoled me to have known that Sir Philip visited Lord Macclesfield in the Tower, was in the habit of cheering his retreat at Derby, and showed a grateful solicitude to vindicate his memory. But I am afraid that he left the condemned Chancellor to his fate, like "others whom his former bounty fed,"—eager only for his own aggrandisement.

Yorke devotes himself to the Duke of Newcastle.

I must now pursue the prosperous career of the wary Sir Philip. Having, upon the introduction of Lord Macclesfield, made the acquaintance and gained the good graces of the Duke of Newcastle, on the fall of his first patron, he devoted himself to that "place-loving nobleman," who, hardly gifted with common understanding, and not possessing the knowledge of geography and history

* 8 St. Tr. 414—480.

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now acquired at a parish school,—from the rotten borough system then in prime vigour, was in high office as a minister longer than Burleigh, and had much more power and patronage than that paragon of statesmen. Among other advantages which Yorke derived from this connexion, he was always returned to parliament free of expence, while Willes, and other competitors at the bar, were involved in contests which made a serious inroad upon their professional gains, and kept them poor, while *he* was advancing to be a "millionaire." Lord Hardwicke's detractors allow that he never forgot these obligations. "The best thing that can be remembered of the Chancellor," says Horace Walpole, "is his fidelity to his patron; for, let the Duke of Newcastle betray whom he would, the Chancellor always stuck to him in his perfidy, and was only not false to the falsest of mankind."

Accession of Geo. II.

On the vacancy occasioned by Lord Macclesfield's conviction, although he had pretensions to the Great Seal, he was much better pleased to remain Attorney General — with the bar as a certain resource — than to accept a precarious office, the loss of which was likely soon to leave him without employment or profit — considering that George I. was old and infirm, and that an entire change of ministry was anticipated at the accession of the Prince. When that event did take place, he was delighted to find himself, by the skilful management of Walpole, more secure than ever — in the enviable situation of Attorney General to a powerful government, with the certainty of succeeding to the highest offices in the law.*

* His high position at this time may be estimated by the following letter of introduction, addressed to him from Tickell, the friend of Addison.

"Tho$^s$. Tickell, Esq. to S$^r$ Philip Yorke, Attorney General.

"Dublin Castle, Nov. 4. 1725.

"Sir,

"Mr. Broughton, whom my Lord Lieutenant has sent over with the Irish Money Bill and some private ones, has so often heard me boast of being known to you, that he has desired me to introduce him to you, by a Letter. He indeed thinks too highly of my interest in you, in imagining, that my recommendation may incline you to give him the utmost despatch in his business. But I will take upon me to say, that his conversation is so agreeable, that for your own sake you will endeavour to put a speedy end to the serious part of it, and fall into that, for which you have so nice a taste. I should not presume to

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Bill to prohibit loans to foreign states.

In the session of 1730, he was called into action by the combination between the Tories and discontented Whigs, which began to annoy, without being formidable to, the minister. With the view of crippling the Austrians, with whom there were some differences pending, and who wished to negotiate a considerable loan in London, the Attorney General brought in an Act to forbid the lending of money to any foreign power without the King's licence, and to compel all persons to answer a bill in Equity to discover if they were concerned in such transactions. This measure being strongly opposed by Pulteney, and by Sir Wm. Wyndham, Sir Philip Yorke ably urged all that could be said in its defence. He tried to support it on the principles of the common law, according to which the King has the prerogative to prevent his subjects from entering into the service of a foreign Prince by the writ of *ne exeat regno*, or by proclamation to recall them,—urging that "their money, the sinews of war, might be more useful and dangerous than their persons. The Dutch might have the advantage of being the lenders of the money if we were not, but the measure was not to be judged by mere commercial considerations of profit and loss, but was framed with a view to a question of peace and war, and to the balance of power in Europe: it was only a temporary restraint, and might be compared to an embargo, which interfered with trade more directly, yet when necessary for the public safety was not complained of. As to the clause compelling a discovery it was indispensable, as without it, from the facility of secretly entering into such transactions, the Act would be wholly nugatory."* It passed by a large majority; and Coxe says, "a sufficient justification of the mea-

take this liberty, if I did not honour you more for your humanity, than others can for your great talents; and if upon that account I was not with the truest respect,

"Your most humble and most

"obedient Servant,

"THO. TICKELL.

"To the honble. Sr Philip York,

"his Majesty's Attorney General."

Bibl. Birch. Add. MS. 4325. p. 125.

* 8 Parl. Hist. 187.

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sure was, that the want of money compelled the Court of Vienna to submit to terms of accommodation *;" but the Dutch practice of selling ammunition to their enemies is probably more in accordance with true statesmanship as well as the principles of political economy.

Yorke's speech for an augmentation of the forces.

The next time that Sir Philip Yorke's name is mentioned as taking a part in the debates, is in the session of 1732, when, upon a great muster of opposition under the auspices of Bolingbroke, the minister was so hard run for speakers as to be obliged to put up the Attorney General to defend the augmentation of the army. Thus called upon, he was not quite so *bellicose* as he is said to have been on a subsequent occasion when Walpole is represented to have hailed him as a military officer; but he contended that, with a view to peace, the proposed force was necessary. "It is certainly," said he, "the interest of this nation to render itself as considerable as possible amongst our neighbours, for the greater opinion they have of our strength and power the less apt they will be to undertake any expeditions or invasions against us, and the more easy it will be for us to obtain from them any advantages or immunities which we may think necessary for improving the trade and increasing the riches of the kingdom. The factions and divisions which are springing up at home, encourage our enemies abroad, and render a commanding attitude on the part of the government more indispensable. His Majesty only asks that which is required for the public safety, and any apparent disagreement between him and his parliament will be the signal for internal commotion and foreign war." † After the most furious debate which had been known since the reign of Queen Anne, the Minister had a majority of 241 to 171.

March 1. 1733. Walpole's Excise scheme.

In the following year was brought forward the "Excise Scheme," when Sir Philip Yorke is said to have delivered one of the best speeches in favour of that measure; but in print it is extremely vapid. The most valuable part of it probably was where he showed, from his professional knowledge and experience as Attorney General, that the laws of *Excise* under

* Coxe's Walpole, vol. ii. p. 358. † 8 Parl. Hist. 893.

which it was proposed to put the collection of the duties on wine and tobacco, were not more severe than the laws of the *Customs* from which they were to be transferred. He denied that the measure encroached on the constitution, "unless frauds in the collection of the revenue by long usage had become a part of the constitution," and he maintained that "the only liberty which would be subverted was the liberty of smuggling."

Yorke's defence of it.

A violent opponent of the measure had during the debate asserted that its object was to revive the worst practices of Empson and Dudley. So grossly ignorant of English history was the Prime Minister, that he had been obliged to ask Sir Philip Yorke, sitting by him on the Treasury bench, "*who Empson and Dudley were;*" and he was afraid to trust himself (lest he should commit some ludicrous blunder) to repel the charge. Sir Philip now took occasion to reprobate the conduct of the wicked tools of Henry VII., and drew a comparison between his own past conduct and that of his predecessor Mr. Attorney General Dudley, which drew forth cheers from all parts of the House.— We ought not to doubt that the speech deserved the high praise bestowed upon it, the report of it which we have being prepared by some one who probably (according to the usage of the time) had heard not a word of it, and who, at all events, was evidently ignorant of the principle and details of the bill.* Sir Philip had ample time to prepare, and he had strong motives to put forth all his strength; for now was the first occasion of his experiencing the danger of being of office by turned out a hostile majority.

His moderate success in the House of Commons.

He never again spoke in the House of Commons. Here he had now sat fifteen years, being heard respectfully on the rare occasions when he took part in the debate, but never having acquired much reputation as an orator. In addition to the prejudice then prevailing against him by reason of his profession, he was too didactic and logical for the understandings of the country gentlemen, and he did not sufficiently

* 8 Parl. Hist. 1287.

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deal in personalities, and in clap-trap declamations, to suit himself to the somewhat mobbish taste of that assembly.

His elevation to the woolsack had been for some time anticipated from the age and growing infirmities of Lord King, whose immediate successor he was generally regarded. The secret history of the arrangements actually made on the resignation of Lord King, and the death of Lord Raymond, is not authentically known, and it would be vain to speculate farther upon them.*

Nov. 1733. Yorke created Chief Justice of the King's Bench, and a Peer, by the title of Lord Hardwicke.

The profession and the public were highly satisfied with the new Chancellor and the new Chief Justice. Talbot was considered of a more open and generous nature than his colleague; and all who knew him were pleased that he had recovered the precedence of which he had been unjustly deprived by Lord Macclesfield's partiality for another; while the learning, ability, and strict integrity which the world admitted in Sir Philip Yorke, though he was less remarkable for his amiable qualities, gave assurance that the duties of the important office of Lord Chief Justice of the King's Bench would be discharged in the most exemplary manner. Although he might not, himself, be perfectly contented with the allotment to him of the lower dignity, this was no slight which he would have been justified in resenting; and, acquiescing with a good grace, he professed his determination to support the Government, and to back the new Lord Chancellor in the House of Lords to the utmost of his power. At the same time that he was made Chief Justice of England he was elevated to the peerage, by the title of Baron Hardwicke, of Hardwicke, in the county of Gloucester; and he was likewise sworn a member of the Privy Council. It has been said that he was likewise then admitted into the cabinet; but this is certainly a mistake, although, on particular subjects, he was confidentially consulted, from time to time, by Walpole.†

Lord Hardwicke as a common-law Judge.

He took his seat in the Court of King's Bench in Michaelmas Term, 1733, and continued to preside in that Court above

* Ante, Vol. IV. p. 656.

† See Biogr. Brit. "Hardwicke."

three years. No case of very great importance, either civil or criminal, came before him as a common-law Judge, but we know, as well by the general testimony of contemporaries as by the printed Reports of his decisions*, that he uniformly displayed, in addition to the strictest impartiality, much acuteness of intellect and great depth of legal erudition. Following such men as Holt, Parker, and Raymond, he found the principles of the old common law well defined, and they were still tolerably sufficient for the exigencies of society. He assisted a little in adapting them to the new commercial transactions and changed manners which were gradually springing up; but to his successor, Lord Mansfield, was reserved the glory of relieving the poverty of our feudal jurisprudence from the spoils of foreign codes. Although Lord Chief Justice Hardwicke showed high capacity while he presided in a common-law court, and did ample justice to the suitors, he did not make his name very distinguished by any considerable improvements in the system which he there administered. He subsequently exhibited greater powers when he had to expatiate in a new field.

His management of the Puisne Judges.

The business of the Court of King's Bench now chiefly rested on his shoulders. Lee, his senior puisne, who afterwards succeeded him, was of some service from his knowledge of pleading; but Probyn, who came next, was a mere cipher; and Page, the junior, required to be kept in strict subjection, for he was ignorant, foolish, and presumptuous. In cases of importance, with a view to check the babbling of the puisnes,—after the arguments were finished, the Chief Justice insisted always that time should be taken to consider, and he afterwards delivered the decision in a written judgment, which he himself prepared. Thus he closed their mouths, unless they ventured to differ in opinion, which rarely happened.—So much for Lord Hardwicke as a common-law Judge.†

* See "Reports Temp. Hardwicke," by Lee.

† Horace Walpole says, that while Chief Justice, "he had gained the reputation of humanity by some solemn speeches made on the circuit at the condemnation of wretches of low crimes;" but I know not to what the sarcasm refers, and I suspect that it is introduced to give point to the charge of in-

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Lord Hardwicke's great success in the House of Lords as a debater.

During his chief Justiceship his political importance was greatly enhanced. Many had expected that he would succeed better as a debater in the Upper than he had done in the Lower House of parliament, and this expectation was not disappointed. He now seemed to feel more at home, and, with increased confidence, his speaking rapidly improved. Not so graceful as Chesterfield, he was more argumentative and forcible; and after he had had a little experience in his new sphere, it may be truly said that between the attainder of Bolingbroke and the appearance there of Lord Mansfield and Lord Chatham the House of Peers presented no one who could attack or defend with more skill or success.

His speech on maintaining a standing army.

His first encounter was with Lord Chesterfield, who, smarting from his dismissal on account of his opposition to the Excise Scheme, made a furious attack upon the Government, when an address of thanks was moved in answer to a message from the King, proposing an augmentation of the forces, in order to be prepared for a threatened war. Indulging in the common-places about the danger to liberty from military violence, the "Wit among Lords," maintained that as a standing army in time of peace was contrary to law, it could only be legalised by an act of parliament, so that the proposed address would be nugatory. Lord Hardwicke immediately followed, and thus began: "As the noble Earl who has just sat down has based his objections to the motion so much on legal and constitutional grounds, perhaps, my Lords, I may be excused in now offering myself to your Lordships' notice, although I must confess that the marshalling of troops, and the sufficiency of military establishments are not subjects with which I have ever been familiar. While the King by his prerogative may enlist soldiers when he pleases, I agree that a standing army cannot be maintained in time of peace

humanity on the trial of the rebel Lords.—Lord Thurlow is represented as having thought Lord Hardwicke a better common-law, than equity, Judge: "I have heard the late Lord Thurlow say, that he thought the Earl of Hardwicke was more able, as Chief Justice of the King's Bench, than he was as Lord Chancellor; but I could never discover on what ground."—Nich. Recoll. ii. 119. This must have been with a view of lowering Lord Hardwicke in the latter capacity, rather than exalting him in the former

without the authority of parliament, because of his own authority he could not punish them by martial law, nor could he raise funds for their support. But we have passed the "Mutiny Bill," and we shall pass the "Appropriation Bill," by which the army may be disciplined and paid,— and, with great submission to the noble Earl, no farther legislation will be necessary to gain the object recommended by the message from his Majesty. Under such checks, the maintenance of a sufficient force to preserve internal tranquillity, and to command the respect of foreign nations, while it is indispensable for the protection of our persons and our property, can raise no danger to liberty. Being summoned here to advise his Majesty *de arduis regni*, he now consults you whether the existing force is sufficient? If you are of opinion that it ought to be augmented, you will say so by the address which has been moved. According to the usage of parliament the Crown and the two Houses communicate by message and address; from the usage of parliament we know the law and the constitution,— and there is no pretence for the ingenious suggestion of the noble Earl, that on such an occasion you are to proceed by an act of parliament."—He then went into the general merits of the question, and from the state of Europe and our foreign relations showed the prudence as well as the legality of the proposed measure. *

In the session of 1735 Lord Hardwicke is not mentioned as taking part in any debate except upon the bill respecting the withdrawing of troops from parliamentary elections,— when he tried to calm the fears that were entertained of the military overawing the electors, and the little necessity there was to provide new punishments for such offences. †

Mortmain acts.

The following year he rendered essential service to the public by supporting a bill to amend the mortmain acts,— which, instead of being repealed (as some now wish), will I hope be extended to bequests of personal property,— for it is essentially necessary in all cases to guard death-bed from improper solicitations, by which superstition may be en-

* 9 Parl Hist. 538.

† Ibid. 886—910.

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couraged, and those for whom dying persons ought to provide may be left destitute.* He next opposed and threw out a well-meant but impracticable bill for regulating the payment of tithes by Quakers, which seems to have excited very great interest at the time, but which, from the general commutation of tithes, is now unimportant.†

Feb. 1. 1737. Lord Hardwicke on the legality of employing the military to suppress riots.

The last speech he made while Chief Justice, was in a debate which took place a few days before the death of Lord Talbot, on the murder of Captain Porteous at Edinburgh, and the riots which had lately occurred in different parts of England. He now took occasion to refer to the explosion of gunpowder, and the dispersion of libels which had happened the preceding term in Westminster Hall.

Explosion of gunpowder in Westminster Hall.

Between one and two in the afternoon, while all the courts were sitting‡, a loud report was heard, and the Hall was filled with smoke. This was found to be an ingenious device for dispersing a mass of libels on the government. Some of these being carried into the Court of King's Bench, and shown to the Chief Justice, he immediately made a comment upon their wickedness, ordered them to be laid before the grand jury, who were then sitting, and prevailed upon the Queen, acting as Regent, to offer a large reward for the discovery of the offender. The author of this "Gunpowder Plot" turned out to be a crack-brained, nonjuring parson, who had acted without any associates,—so that the affair was laughed at,— and it had been treated with some ridicule by the opposition peers. The indignant Chief thus expressed himself:—"The attempt which noble Lords opposite make the subject of their jests, was certainly one of the most audacious affronts ever offered to an established government, and was levelled directly at the illustrious family now upon the throne. I do not mean, my Lords, the powder or rockets then blown up, for I do not believe that the guilty contriver meant to destroy the Hall, or to injure any one in it; but I mean the scandalous and seditious libels spread about the

* Ibid. 1119. † Ibid. 1218.

‡ Hours had now greatly altered; and the Courts, instead of meeting at seven and breaking up at eleven, met at nine and sat till two. For many years after, however, there were *post-prandian* sittings.

Hall by the explosion, and afterwards dispersed over the whole of this vast metropolis. These libels not only reflected most indecently on the proceedings of the two Houses of Parliament, but denied his Majesty's right to the crown, and asserted the Pretender to be our true and only lawful sovereign. If vigorous steps had not been taken to detect and punish the offender, the world would have believed that the established government was so feeble that it might be insulted with impunity, and this insult would soon have been followed up by an organised insurrection, and by foreign invasion." Having commented upon the death of Captain Porteous, which he denounced as "an atrocious murder, the authors of which must be brought to condign punishment," he described the formidable nature of the riots in different parts of England, and justified the suppression of them by the military. He strongly combated the notion that there was any thing illegal in employing soldiers to preserve the public peace. "I am surprised, my Lords," said he, "to hear it said that if the King's troops should now and then, upon extraordinary occasions, be called to the assistance of the civil magistrate, we should on that account be supposed to live under a military government. I hope it will be allowed that our soldiers are our fellow-citizens. They do not cease to be so by putting on a red coat, and carrying a musket. Now, it is well known that magistrates have a power to call any subject of the King to their assistance, to preserve the peace, and to execute the process of the law. The subject who neglects such a call is liable to be indicted, and, being convicted, to be fined and imprisoned for his offence. Why, then, may not the civil magistrate call soldiers to his assistance, as well as other men? While the King's troops act under the directions of the magistrate, we are as much under civil government as if there were not a soldier in the island of Great Britain. The calling in of these armed citizens often saves the effusion of innocent blood, and preserves the dominion of the law." *

* 9 Parl. Hist. 1294.

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On this day Lord Talbot, who took an active share in the debate, was in excellent health, and seemed likely for many years to fill the office of Chancellor, establishing a reputation as the greatest Equity Judge of the century in which he flourished.* If these expectations had been realised, Lord Hardwicke would have attracted little comparative notice, and having gained no conspicuous place in history, would only have been recollected by lawyers, like Lord Raymond, as an eminent common-law judge. But he was destined to be twenty years a cabinet minister,—himself to form cabinets, — and, generations after his death, to have a statue erected to his memory by the English nation as the greatest contributor to our Equity code.

Feb. 14. 1737. Law arrangements on the death of Lord Talbot.

On the day Lord Talbot died the Great Seal was delivered by his executors into the hands of George II. at St. James's palace. There never was any doubt as to his successor, for Lord Hardwicke was now regarded as decidedly the most useful man to be introduced into the Cabinet and to preside on the woolsack as Chancellor,— and he himself, placing just confidence in the stability of the administration, did not hesitate to agree to a move which promised to gratify his love of fame, his love of power, and his love of money. But, there being some difficulty with respect to salary and pension, and other accompanying arrangements requiring consideration, the Great Seal remained for a whole week in the personal custody of the King.†

Meanwhile, as Parliament was sitting, and there was no Lord Chancellor or Lord Keeper, it was necessary to provide a Speaker for the House of Lords, and the Great Seal, while in the King's possession, was (somewhat irregularly) put to a commission authorising Lord Hardwicke to act in that capacity.‡ He accordingly did act for several days as Speaker

* It appears from the Lords' Journals, that down to the 9th of Feb. 1737, Lord Talbot was present in the House, and presided as Chancellor.

† This is the last instance of such an occurrence. Since then no Chancellor has died in office; and the usual course has been, that the Great Seal has been surrendered up by the outgoing Chancellor at a Council, and, at the same Council, has been delivered to his successor.

‡ This, on principle, seems as objectionable as the act of Charles II., in sealing Lord Danby's pardon with his own hand. See ante, Vol. III. p. 408.

without being Chancellor.* During this interval, it is related that Walpole, resisting some of Hardwicke's demands, said to him by way of threat, — "I must offer the Seals to Fazakerly." "Fazakerly!" exclaimed Hardwicke, "impossible! he is certainly a Tory! — perhaps a Jacobite!" "It's all very true," coolly replied Sir Robert, taking out his watch, "but if by one o'clock you do not accept my offer, Fazakerly by two becomes Lord Keeper, and one of the stanchest Whigs in all England." The bargain was immediately closed, and Lord Hardwicke was contented with the promise that the next Tellership should be bestowed upon his son.

Lord Hardwicke Chancellor.

Sir John Willes, the Attorney General, being provided for by being made Chief Justice of the Common Pleas, and it being settled that Lee should be Chief Justice of the King's Bench, and that Sir Dudley Ryder and Sir John Strange should be the new Attorney and Solicitor General, — on the 21st of February the Great Seal was delivered to Lord HARDWICKE, with the title of Lord Chancellor. However, he continued Chief Justice of the King's Bench till the commencement of Easter Term, and on the first day of that Term, after a grand procession to Westminster Hall, attended by Sir Robert Walpole and many of the nobility, having been sworn in and transacted business in the Court of Chancery, he went into the Court of King's Bench, and there delivered

* "Feb. 10.—The Lord Chancellor being absent, the Lords were informed by the Duke of Newcastle that his Majesty had been pleased to grant a commission under the Great Seal to Philip Lord Hardwicke, Lord Chief Justice of the Court of King's Bench, to supply the room and place of Lord Chancellor in this House." The commission being read, was found to authorise him "from time to time to use and supply the room and place of Lord Chancellor of Great Britain in the Upper House of Parliament, amongst the Lords spiritual and temporal there assembled, during the absence of our right trusty and well-beloved counsellor Charles Lord Talbot, &c. from his accustomed place in our said Upper House of Parliament, and then and there to do and execute all such things which our said Chancellor of Great Britain, using and supplying the said room and place, should or might do in that behalf," &c.

"Feb. 11. — The Lord Hardwicke sat Speaker by virtue of his Majesty's commission." On the 11th the house was adjourned to the 16th.

"Feb. 16.—The Lord President signified to the House that the Lord Chancellor being dead, his Majesty had been pleased to grant another commission under the Great Seal to the Lord Hardwicke to supply the room and place of the Lord Chancellor or Lord Keeper of the Great Seal in this House during his Majesty's pleasure." This is the irregularly sealed commission. On the 21st Feb. Lord Hardwicke sat as Lord Chancellor.

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a judgment in a case which had been previously argued, —so that he had the glory of presiding on the same day in the highest civil and the highest criminal Court in the Kingdom.*

* "Geo. II., 14th Feb. 1736-7. Memorandum—that on Monday, the 14th day of February, 1736-7, Charles Lord Talbot, Lord High Chancellor of Great Britain, departed this life; and, on the evening of the same day, the Great Seal was delivered by the Duke of Newcastle to his Majesty, who kept it in his custody till Monday, the 21st of the same month of February, during which time there was nothing sealed but a commission appointing Philip Lord Hardwicke Speaker of the House of Lords during pleasure; and, on the said 21st of February, his Majesty was graciously pleased to deliver the Great Seal to the aforesaid Philip Lord Hardwicke, with the title of Lord Chancellor, who was sworn at the same time in Council, and took his place accordingly; and his Lordship sat in Lincoln's Inn Hall during the Seals after Hilary Term, but he was not sworn in Westminster Hall till the 27th day of April, 1737, being the first day of the then next Easter Term, when his Lordship took the oaths of allegiance and supremacy, and the oath of office, the Master of the Rolls holding the book, and the deputy clerk of the Crown giving the oaths. After which, the Attorney General moved that the oath might be recorded, but his Lordship did not take the oath of abjuration till another day, in the King's Bench."—*Roll*, 1727—1760.

# CHAPTER CXXXI.

## CONTINUATION OF THE LIFE OF LORD HARDWICKE TILL THE DEATH OF QUEEN CAROLINE.

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April 27. 1737.

I AM sorry to be obliged to begin my account of Lord Hardwicke, as Chancellor, by reprobating that conduct which his indiscriminate admirers have justified, and which some moderate men have attempted to palliate.

Censure on Lord Hardwicke for his conduct to Thomson, the poet.

I have related how Lord Chancellor Talbot, from his admiration of the genius of Thomson the poet, and from personal kindness for him, had rescued him from the penury and dependence, then the fate of men of letters, by appointing him "Secretary to the Briefs." This was an office in the Court of Chancery which, in strictness, was held only under the Chancellor making the appointment, but the holder of which was generally continued in it by the succeeding Chancellor. Of all the cases ever known, Thomson's is the one where it might have been expected that the usage of confirmation would have been most eagerly adhered to.* The author of the Seasons was not only a man of genius, and most amiable in his private character, but he was warmly attached to the Whig party, and had essentially promoted its interests by his writings. He had received the office, on which he was entirely dependent, from the colleague and personal friend of the present Chancellor, as a reward for his public services, as well as for his attachment to young Talbot with whom he had travelled, and to whose memory he had offered a touching tribute of applause.

I give the most mitigated account I can find of the affair — in the words of Dr. Johnson,— who disliked Thom-

* There are several such offices held under the Attorney General. When I was first appointed to that office in 1834, I had the usual applications to be continued in them, which of course were granted. When I was re-appointed in 1835, I intimated that such applications were unnecessary; and my successors, Sir Frederick Pollock, Sir William Follett, and Sir Frederick Thessiger, have behaved in the same spirit.

son, as a Scotsman, as a Whig, and as the author of "LIBERTY," and was willing to cast blame in this affair upon him, rather than upon the Chancellor. After stating the poet's appointment to his office by Lord Talbot, he thus proceeds: — "Thomson now lived in ease and plenty, and seems for a while to have suspended his poetry; but he was soon called back to labour by the death of the Chancellor, for his place then became vacant; and though Lord Hardwicke delayed for some time to give it away, Thomson's bashfulness or pride, or some other motive, perhaps not more laudable, withheld him from soliciting; and the new Chancellor would not give him what he would not ask. He now relapsed to his former indigence; but the Prince of Wales was at that time struggling for popularity, and by the influence of Mr. Lyttleton professed himself the patron of wit; to him Thomson was introduced, and being gaily interrogated about the state of his affairs, said, 'that they were in a more poetical posture than formerly,' and had a pension allowed him of one hundred pounds a year." *

One cannot without indignation think of a man in Lord Hardwicke's situation seeking to subject Thomson to the humiliation of asking a favour, when it might naturally have been expected that his continuance in the office of secretary would have been spontaneously and earnestly pressed upon him. Even Mr. Salkeld's "gratis clerk" had shown some degree of pride, and disliked carrying home cabbages from Covent Garden, and oysters from the fishmonger's! An attempt has been made to praise Lord Hardwicke as a patron of literary merit, because he afterwards obtained a pension from the public purse for Mallet as a reward for his pamphlet against Admiral Byng; but, says a contemporary, "let it be recollected that the same man, on his succeeding Talbot as Lord Chancellor, deprived Thomson, a poet and patriot of the first class, of the place of Secretary of Briefs, which had been given him by his predecessor, and was the poor poet's only subsistence and support." † Although Lord Hardwicke always took care not only to have the law

* Dr. Johnson's Life of Thomson.

† Cooksey, 36.

on his side, and was generally solicitous to have something plausible to say in his own defence, should his conduct be questioned,— it must be confessed that he was not only rather selfish, but that, from heartlessness, he even lost opportunities of doing acts which would have been considered generous, and which would have given him popularity — without depriving him of money, or of any family aggrandisement.

Lord Hardwicke as an Equity Judge.

We are now to see him in his glory as an Equity Judge. Although he by no means distinguished himself in framing laws to be enacted by Parliament — viewed as a magistrate sitting on his tribunal to administer justice, I believe that his fame has not been exceeded by that of any man in ancient or modern times; and the long series of enlightened rules laid down by him, having, from their wisdom, been recognised as binding on all who have succeeded him, he may be considered a great legislator. His decisions have been, and ever will continue to be, appealed to as fixing the limits, and establishing the principles of that great juridical system called EQUITY, which now, not only in this country and in our colonies, but over the whole extent of the United States of America, regulates property and personal rights more than the ancient COMMON LAW.

Foundation of his great excellence.

The student, animated by a generous ambition, will be eager to know whence this great excellence arose? — Like every thing else that is valuable—it was the result of earnest and persevering labour. A complete knowledge of the common law was the foundation on which he built. This he had gained not only by reading but by circuit experience, by continuing frequently to plead causes in the King's Bench and Exchequer while he was Attorney General, and by presiding above three years in a common-law court. Having been initiated in Chancery practice during his clerkship with Mr. Salkeld, he had read attentively every thing to be found in the books connected with equity, and he had actually been a regular practitioner in Chancery during the whole of the Chancellorships of Lord Macclesfield and Lord King. He now revived his recollection of that learning by again going over the whole of it as if it had been new to him; and he obtained MS. notes of such of Lord Talbot's decisions as were

of any importance, — so that in all branches of professional information he was equal, and in many superior, to the most eminent counsel who were to plead before him. But that to which I mainly ascribe the brilliancy of the career on which he was entering, was the familiar knowledge he acquired of the Roman civil law. The taste for this study he is said to have contracted from the necessity of preparing himself first to argue as an advocate, and then to decide as a judge, appeals to the House of Lords from the Court of Session in Scotland. In that country he found the Roman civil law regulating the enjoyment and succession of personal property, and even frequently alluded to by way of illustration in questions respecting entails. Like most English lawyers, in preparing for the bar, he had hardly paid the slightest attention to it. While Attorney General he was retained in many Scotch appeals, and for the occasion he was obliged to dip into the Pandects and into the commentaries upon them; but although he had the discernment to discover the merit of these admirable compilations, it was not indispensably necessary for the discharge of his duty that he should examine them systematically, and his time was filled up with more urgent occupations. Now that he was to sit in the House of Lords as sole Judge to decide all appeals from Scotland, he saw the necessity of making himself a profound Scotch lawyer, and he found that this was impossible without being a good civilian. Therefore, having gone through Mackenzie, Bankton, and Stair *, he regularly proceeded to the Corpus Juris Civilis with Vinnius, Voet, and other commentators, and his mind was thoroughly imbued with the truly *equitable* maxims of this noble jurisprudence. I delight in recording how his unrivalled eminence as an equity Judge was achieved, — lest the aspiring but careless student should think it could be reached by natural genius and occasional exertion: —

> —— "Pater ipse colendi
> Haud facilem esse viam voluit . . . .
> . . . curis acuens mortalia corda."

* He took special delight in "*Dirleton's Doubts*," saying, "his *doubts* are more valuable than other people's *certainties*."

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His demeanour in Court.

Lord Hardwicke, having bestowed unremitting pains in qualifying himself for the discharge of his high duties,—when occupying the judgment-seat exhibited a pattern of all judicial excellence. Spotless purity—not only an abstinence from bribery and corruption*, but freedom from undue influence, and an earnest desire to do justice,—may at that time, and ever afterwards, be considered as belonging to all English Judges. But I must specially mention of this Chancellor, that he was not only a patient but an eager listener, conscious that he could best learn the facts of the case from those who had been studying it, and that, notwithstanding his own great stores of professional learning, he might be instructed by a junior counsel, who for days and nights had been ransacking all that could be found scattered in the books on a particular topic, actuated by a desire to serve his client, and to enhance his own reputation. While the hearing was going on, the cause had the Chancellor's undivided and devoted attention. Not only was he undistracted by the frivolous engagements of common life, but during a political crisis, when there were to be important changes in the cabinet, when his own continuance in office was in peril, he was, as usual, calm and collected; and he seemed to think of nothing but whether the injunction should be continued or dissolved, and whether the bill should be dismissed with, or without, costs? Some said that he was at times acting a part, and that he was considering how he should conduct a political intrigue, or how he should answer an opponent in debate,—when he pretended to be listening to a thrice-told tale; but so much is certain, that no argument ever escaped him, and

* One attempt was made to bribe Lord Hardwicke. Thomas Martin, mayor of Yarmouth, being threatened with a bill in Chancery, wrote a letter to the Lord Chancellor bespeaking his favour, and inclosing a bank note for 20*l.*, of which his acceptance was requested "for his trouble in reading the papers." An order being made upon his worship, to show cause why he should not be committed to the Fleet for his contempt, he swore "that the said letter was wrote, and the said bank note inclosed therein by him through ignorance, and not from any ill-intent whatsoever." Upon his paying all expences, and consenting that the 20*l.* should be distributed among the poor prisoners in the Fleet, the order was discharged.—27th April, 1748. *Sanders's Orders*, ii. 628.—Lord Sidmouth prosecuted in the King's Bench for an offer to bribe him a simpleton, who, when the criminal information came down, joyfully showed it to his family and his friends, believing that it was the patent for the office he wished to purchase.

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that, in taking notes, it was observed that "his pen always moved at the right time."* He used to declare, that "he did not take his place upon the bench to write letters to his correspondents, or to read the newspaper."† His voluminous note books are still extant, containing, at great length, the material proceedings of the Court during each day,—the statement of the case, the evidence, and the arguments of counsel, — with the answers to be given to them enclosed within brackets. When he took time to consider, he generally wrote his judgments either in his note books or on separate papers, to which his note books refer. Unlike some Judges, deservedly of high reputation, whose impression on hearing a case stated was never known to vary, he appears not unfrequently, upon further argument and maturer consideration, finally to have arrived at an opinion quite different from that which he had at first entertained, and even expressed; and he certainly well merited the character he gave of himself in this respect, when he said, "These are the reasons which incline me to alter my opinion, and I am not ashamed of doing it, for I always thought it a much greater reproach to a Judge to continue in his error than to retract it."‡ He never interrupted, to show his quickness, by guessing at facts, or anticipating authorities which he expected to be cited. Not ignorant that the Chancellor can always convulse the bar with "counterfeited glee," he abstained from ill-timed jocularity, and he did not level sarcasms at those who, he knew, could not retort upon him. He had a complete control over his temper, and, from the uniform urbanity and decorum of his own demeanour, he repressed the petulance and angry passions of those who practised before him, in-

* *i. e.* I presume, when any thing was said worthy of being noted.

† I must say, that this last practice has occasionally been carried to an indecorous and inconvenient length. A glance at a newspaper may be permitted to a Judge during a tedious reply, as a hint to the counsel against prolixity; and such was the habit of Lord Mansfield, who was ever completely master of all the facts, and all the law, of every case that came before him. But I have seen a Judge indulge his curiosity by turning over the unwieldy pages of the "Times," while a counsel has been opening, in a condensed manner, a very important and complicated case — requiring the closest attention of a Judge, however quick, learned, and discriminating.

‡ 2 Atk. 438.

somuch that it was remarked, that not only was he never himself led into any unbecoming altercation, but that he taught the rival leaders to behave to each other with candour and courtesy. It is likewise stated, to his credit, that, although in society he was supposed rather to be supercilious, presuming too much upon his acquired dignity, he was in Court uniformly affable to the solicitors, remembering that they were the class to which he expected himself to have belonged, and to whose kindness he had been greatly indebted for his advancement.

The arguments being finished, if the case seemed clear, and did not involve any new question, he immediately disposed of it; but wherever his decision was likely to be quoted as regulating "the doctrine of the Court," he took time for consideration, and having perused his notes and referred to the authorities cited, he came with a prepared and often a written judgment. On such occasions he was likened to "the personification of wisdom distributing justice and delivering instruction."

His judgments.

These performances certainly do come up to every idea we can form of judicial excellence. They are entirely free from any parade of learning, or the affectation of pointed or antithetical sentences. Two objects seem entirely to absorb the attention of the Judge: 1. Properly to adjust the disputed rights of the parties. 2. To establish a rule by which similar questions may be solved in future. He was anxious to bring every case within the scope of some general principle which he enunciated and defined, guarding it with its proper conditions and exceptions. He did not decide every case upon its "*specialties*" or peculiar circumstances, — leaving the profession entirely at a loss with respect to the general principle which had been discussed,— nor did he wrest the peculiar circumstances of the case to make it conform to his canon. Having lucidly stated the allegations on each side, and accurately enumerated the facts which were established, he propounded the question or questions which they raised, and on which his decree must depend. Then recollecting the observation of Lord Bacon, that "his equity was to be taken from his books, and not from his brains," and that "the

Chancery was ordained to supply the law, not to subvert the law," he reviewed all the authorities upon the subject, and if none of them were expressly in point, he tried to educe from them by analogy a rule which harmonised with them in principle, and which might equitably govern all cases similarly circumstanced. He never resorted, however, to forced interpretations or fanciful analogies, and he was always anxious to support his opinion by legal precedents — in the selection and application of which he was particularly happy. Nor was he betrayed into the seductive and dangerous practice of laying down rules in loose and sweeping terms, which might carry their authority far beyond the point necessarily to be decided, and mischievously include cases which were not then in contemplation. He, therefore, expressed himself in the most guarded terms, and mentioned distinctly the qualifications with which he meant his opinion to be received. There was no enthusiasm in his nature, but he really had a passion (such as I have seen exhibited by the cool-headed Tenterden) to do justice, and to advance the science over which he presided — most unlike the recklessness of some Judges in times gone by, only anxious to escape open censure — indifferent as to the rights of parties, the improvement of jurisprudence, and their own permanent fame.

Lord Hardwicke's judgments are deservedly praised for luminous method in the arrangement of the topics, and elegant perspicuity of language in the discussion of them. But I will venture to point out what I consider their peculiar excellence — the fair and manly manner in which the arguments are stated which are to be overruled. I have known Judges who, in important cases, have entirely omitted to notice the most powerful objections to their view of the case — not probably from any disingenuous motive, but from not understanding them. Lord Hardwicke always fully sees and appreciates the arguments against the side which he adopts — restates them with additional force and clearness, and refutes them so satisfactorily as almost to bring conviction to the minds of those who had invented them, and had for a time been the dupes of their own subtlety.

He was particularly praised for the manner in which he

dealt with cases coming before him on exceptions to the Masters' Report, and on appeal from the Master of the Rolls. He showed no propensity whatever to reverse what had been decided, but he freely and boldly considered every question submitted to him as the superior Judge. Not shrinking from trouble or responsibility, he formed his own opinion upon it, and resolutely corrected what appeared to him to be amiss. There were four Masters of the Rolls successively under him, and he will be found to treat them all with great respect, but with great freedom.

Lord Hardwicke's Chancellorship considered the golden age of Equity.

By these means Lord Hardwicke, in a few years, raised a reputation which no one presiding in the Court of Chancery has ever enjoyed, and which was not exceeded by that of the great Lord Mansfield as a common-law Judge. The wisdom of his decrees was the theme of universal eulogy. "Etiam quos contra statuit, æquos et placidos dimisit." Such confidence was there in his administration of justice, that the business of the Court was greatly increased, and it is said that more bills were filed under him than at any subsequent time, although the property administered by the Court of Chancery has since been increased sevenfold. There were still rare complaints of delays in Chancery, from the intricate nature of the inquiries, the death of parties, and other inevitable obstructions to the final winding up of a suit, but by great exertion arrears were kept down, "and this is fondly looked back upon as the golden age of Equity."*

No decree of Lord Hardwicke reversed.

I hardly think it worth while to mention the statement which is so much harped upon by the common herd of Lord Hardwicke's petty biographers, that only three of his decrees were appealed against, and that in each of these cases the decree was affirmed. The truth is, that during the whole of his time, through management which I shall afterwards have to consider, he was the sole law Lord, and substantially the Chancery was a Court of the last resort.

His demeanour on the wool-

But I should do injustice to his memory if I were not to

* Lord Hardwicke,—abstaining from drinking his bottle after dinner,—a sacrifice too great for his successor,—regularly, in addition to his morning sittings, sat twice a week in the afternoon or evening.

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sack, and manner of disposing of the judicial business of the House of Lords.

praise what hitherto has attracted little notice — the admirable manner in which he disposed of the judicial business in the House of Lords. His demeanour on the woolsack appears to have been a model for all Chancellors. While he was affable and courteous, he studied to preserve order. He himself attended to the debates*, and his example and influence generated a habit of attention and decorum among others. Though, in strictness, without more authority than any other Peer, all sides recognised him as *moderator*, and by his quiet and discreet exertions unseemly altercations and excessive familiarity were effectually discouraged. In his time a meeting of the Peers had somewhat the air of a deliberative assembly,—instead of being a lounging place to hear the news of the day before dressing for dinner.

Although there were only three appeals from Philip to Philip, in all of which the decrees were affirmed without difficulty, there were a good many writs of error from the common law Courts, which, with the assistance of the Judges, he disposed of in a very masterly manner; and there were a great many appeals from Scotland, which, without assistance, he decided to the universal satisfaction of that country, where he was much honoured, till he abolished hereditary jurisdictions, and compelled the inhabitants to wear breeches.

I am now desirous of laying before the reader specimens of Lord Hardwicke's performances as a civil Judge; and there are ample materials for doing so, for besides his own note books and his judgments in his own handwriting, there are several MS. collections of his decisions, by very able hands, during the whole time he sat in Chancery †, and the principal cases before him have been digested and published by Atkyns, Vesey, Sen. and other reporters. ‡ Although

* There are extant copious notes taken by him of debates which, with those of Archbishop Secker, have filled up *lacunæ* in the Parliamentary History.

† Of one of these, by the great kindness of my friend, Mr. Charles Purton Cooper, I am now in possession. It consists of four quarto volumes, beautifully written by Mr. Jodderell, an eminent Chancery barrister. He often does more justice to Lord Hardwicke than Atkyns or Vesey, Sen.; and I am told that, upon a reference to the register's book, he is found to be more accurate.

‡ It seems strange to us, who see reports of all judgments in print almost as soon as they are delivered, that none of Lord Hardwicke's were printed till after he had resigned the Great Seal. The newspapers and magazines of that day

these "Vates sacri" prevent his name from perishing,— from their condensation, they do not render justice to his copious illustrations, his lucid arrangement, and his elegance of diction. Yet they give us the pith and substance of his discourses in pronouncing his decrees, and they afford an exquisite treat to the scientific reader. From these stores I am rather embarrassed with my riches, and,— instead of writing a volume to give a sketch of Lord Hardwicke's new doctrines, with the restrictions and expansions of what had been before laid down,—being confined to the selection of a few detached points decided by him, I am much afraid of being thought to resemble the Σχολαστικος in Hierocles, who, to prove the fine proportions of a building, produced a brick which he had taken from it. The Equity lawyer who feels the little justice I do to the object of his adoration, will best appreciate the difficulty of my task.

All persons believing in a God may be witnesses, and are to be sworn in the manner binding on their consciences, according to their own peculiar religious notions. Dec. 1739.

Lord Hardwicke established the rule that persons, though not Christians, if they believe in a divinity, may be sworn according to the ceremonies of their religion, and that the evidence given by them so sworn is admissible in courts of justice, as if, being Christians, they had been sworn upon the Evangelists. This subject first came before him in *Ramkissenseat* v. *Barker*, where, in a suit for an account against the representatives of an East India Governor, the plea being overruled that the plaintiff was an alien infidel, a cross bill was filed, and an objection being made that he could only be sworn in the usual form, a motion was made that the words in the commission, "on the holy Evangelists," should be omitted, and that the commissioners should be directed to administer an oath to him in the manner most binding on his conscience.—*Lord Chancellor.* "I have often wondered, as the dominions of Great Britain are so extensive, that there has never been any rule or method in

thought as little of the Court of Chancery as of the Court of Pekin. The first volume of Atkyns did not come out till 1757; nor the second till 1767. The first edition of Vesey, Sen., was published in 1771.

At that time MS. notes were much quoted; and counsel depended on recollection,—which had this advantage, that it always made the case recollected, and the case at bar *on all fours.* There are decisions of Lord Hardwicke to be found in Strange, Ambler, Barnardiston, Ridgeway, and West, published subsequently.

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cases of this sort. All persons who believe a God are capable of an oath; and what is universally understood by an oath is, that the person who takes it imprecates the vengeance of God upon him if the oath he takes is false. It was upon this principle that the Judges were inclined to admit the Jews who believed a God according to our notion of a God, to swear upon the Old Testament; and Lord Hale very justly observes, 'it is a wise rule in the kingdom of Spain, that a heathen and idolator should be sworn upon what he thinks is the most sacred part of his religion.' In order to remove the difficulties in this case, I shall direct that the words, 'on the holy Evangelists,' be left out.—The next consideration is, what words must be inserted in their room? On the part of the plaintiff in the cross bill, it is desired that I should appoint a solemn form for the oath: I think this very improper, because I may possibly direct a form that is contrary to the notions of religion entertained by the Gentoo people. I will, therefore, direct that the commissioners may administer such oath in the most solemn manner, as in their discretion shall seem meet; and if the person, upon the usual oath being explained to him, shall consent to take it, and the commissioners approve of administering it (for he may perhaps be a Christian convert), the difficulty is removed; or if they should think proper to administer another oath, that then they shall certify to the Court what was done by them,—and afterwards will come the proper time to controvert the validity of such an oath, and to take the opinions of the Judges upon it, if the Court should have any doubt." *

Nov. 1744. The point was afterwards finally settled in the great case of *Omychund* v. *Barker*, where a similar commission to examine witnesses having issued, the Commissioners certified "that they had sworn the witnesses examined under it in the presence of a Bramin or priest of the Gentoo religion, and that each witness touched the hand of the Bramin,—this being the most solemn form in which oaths are administered to witnesses professing the Gentoo religion." Objec-

* 1 Atk. 19.

tion was made that the depositions so taken could not be read in evidence; and on account of the magnitude of the question, the Lord Chancellor called in the assistance of the three chiefs of the common law Courts.— After very long, learned, and ingenious arguments, which may be perused with pleasure, they concurred in the opinion that the depositions were admissible. *Lord Chancellor.* "As this is a case not only of great expense, but of great consequence, it will be expected that I should not decide without giving my reasons for the decision I am to pronounce. It is certified to us that these witnesses believe in the being of a God, and in his providence; and we know that they appealed to his favour or vengeance in the manner in which they considered the most solemn. The first author I shall mention is Bishop Sanderson, 'De Jurisjuramenti Obligatione.' 'Juramentum' says he, 'est affirmatio religiosa.' All that is necessary to an oath is an appeal to the Supreme Being, as thinking him the rewarder of truth and avenger of falsehood. This is not contradicted by any writer that I know of but Lord Coke, who has taken upon him to insert the word 'Christian,' and he alone has grafted this word into an oath. As to other writers they are all concurring (vid. Puff. lib. 4. c. 2. s. 4.). Dr. Tillotson, in his sermon upon the lawfulness of oaths, taking a text which applies to all nations and all men, 'an oath for confirmation is to them an end of all strife,' (Heb. vi. 16.) says, 'the necessity of religion to the support of human society, in nothing appears more evidently than in this, that the obligation of an oath which is so necessary for the maintenance of peace and justice among men depends wholly upon the sense and belief of a Deity.' The next thing I shall notice is the form of the oath. It is laid down by all writers that the outward act is not essential to the oath. Sanderson is of that opinion, and so is Tillotson in the same sermon. 'As for the ceremonies in use among us in the taking of oaths, they are not found in Scripture, for this was always matter of liberty; and several nations have used several rites and ceremonies in their oaths.' *Secondly,* whether, upon special circumstances, such

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evidence may be admitted according to the law of England? The Judges and sages of the law have laid it down that there is but one general rule of evidence, '*The best the nature of the case will admit.*' The first ground Judges have gone upon in departing from strict rules, is an absolute necessity; then a presumed necessity. Writings subscribed by witnesses are to be proved by those witnesses, but if they are all dead, the proof of one of their hands is sufficient. Where the original is lost a copy may be admitted; if there be no copy, then the proof by witnesses who have read the deed, although the law abhors the memory of man for evidence of that which is written. Persons of the Gentoo religion must be admitted in Courts of Justice in their own country to prove facts and transactions within their own knowledge. One of the parties changing his domicil, and suing here, can he deprive his opponent of evidence which would have been admissible had he sued in the country where the cause of action arose? Suppose a heathen should bring an action at common law, and the defendant should file a bill for a discovery, will any body say that the plaintiff at law may not be admitted to put in an answer according to his own form of an oath? otherwise the injunction for not putting in the answer would be perpetual, and would be a manifest denial of justice. This is the view of the subject taken by Lord Stair, Puffendorf, and other jurists. It has been the wisdom of all nations to administer such oaths as are agreeable to the religious notions of the person taking them. This course does not in the slightest degree affect the conscience of the persons administering the oath, and is no adoption by them of the religion conformed to by one of its votaries. Concurring in opinion with my Lords the Judges that these depositions are admissible, I do order that the objection to them be overruled, and that they be now read as evidence."*

The writer, but not the receiver, of a letter, may obtain an injunc-

Lord Hardwicke settled some important questions respecting literary property. The infamous Edmund Curle had printed a volume of private letters to and from Pope, who immediately applied for an injunction. There had been

* 1 Atk. 21—50.; Phillipps on Evidence, 9.

hitherto no instance of a Court of Equity interfering under such circumstances, and the defendant's counsel argued that Mr. Pope had parted with all property in his own letters which he had sent to his correspondents; that he never had acquired any property in those which he had received; that there could be no property in the letters the defendant had printed, as they were not written for publication, and the statute of Anne for protecting copyright did not extend to them.—*Lord Chancellor.* "As to the first objection, that where a man writes a letter, it is in the nature of a gift to the receiver, I am of opinion that the receiver only acquires a qualified interest in it. The paper on which it is written may belong to him, but the composition does not become vested in him as property, and he cannot publish it against the consent of the writer. Then, as to the objection, that the statute does not apply to these letters, because 'they are on familiar subjects, containing little more than inquiries after the health of friends, and not deserving the name of a learned work,' I am of opinion that we cannot inquire into their nature or merits, and that the bookseller who has published them cannot avail himself of their frivolity if they were frivolous.* But it is certain that no works have done more service to mankind than those which have appeared in this shape upon familiar subjects, and which, perhaps, were never intended to be published. This it is which renders them so valuable; for I must confess, for my own part, that letters which are very elaborately written, and originally intended for the press, are generally the most insignificant, and very little worth any person's reading. However, as for the letters in this volume written *to* Mr. Pope, I think that *he* cannot be heard to complain. They may possibly be published with the authority of the writers of them, and from copies taken before they were sent to him."—The injunction was granted as to the one set of letters, and refused as to the other.†

tion against publishing it.

* Q. Whether a man who has pirated a work ought to have been allowed to allege that it is libellous or obscene, and therefore not entitled to the protection of the law?

† 2 Atk. 342.

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This decision seems very reasonable, but I must own, that I much question another rule he laid down with respect to literary property, although it has not yet been upset. The question arose whether, within the period for which copyright is secured to the author, an *Abridgment* of the work may be published without his consent?—*Lord Chancellor.* "When books are only colourably shortened, the statute is evaded, and the law will give redress. But this must not be carried so far as to restrain persons from making a real and fair abridgment. An abridgment may, with great propriety, be called a new book. Not only are the paper and printing the abridger's, but in his task he may show invention, learning, and judgment. In many cases, abridgments are extremely useful, though sometimes they are prejudicial, by curtailing and mistaking the sense of the author." *

Q. as to rule, that an abridgment of a book may be published against the consent of the author.

Before the passing of the Marriage Act, Lord Hardwicke had much trouble with his female wards, for their marriage without his consent was valid, and he could only punish those concerned in contriving it. Mr. Charles, a clergyman, who married Miss Sophia More, a ward of Chancery, without leave, to John Peck, and others who were present when she was married, appeared to answer the contempt of the Court. —*Lord Chancellor.* "These are mischiefs which want the correction and reformation of the legislature. John Ubank must, in the first place, stand committed, who assisted in conducting Miss More out of her guardian's house, and gave her away at the wedding. The giving away a woman as her father, though not essential, is a custom or ceremony which clergymen always require." Having dealt with others upon the consideration whether they were concerned in the marriage, knowing the infant to be a ward of Court, he comes to Mr. Charles. "Next comes the priest. It is surprising that the canons of the Church, with respect to marriage, are so little regarded by the clergy, but for a violation of them I have no right to pronounce sentence, and Mr. Charles does

Punishment for marrying a ward of Chancery without the leave of the Chancellor. April 6. 1741.

* *Gyles* v. *Wilcock*, 2 Atk. 142.; and see Lofft, 775.; 1 Bro. C. C. 451. I confess I do not understand why an abridgment tending to injure the reputation, and to lessen the profits of the author, should not be considered an invasion of his property.

not seem to me to have been at all concerned in the contrivance or design of doing this wrongful act: therefore he is not guilty of a contempt of the Court; but I would recommend him to be more cautious for the future." *

On another occasion he severely punished persons concerned in clandestinely marrying a girl of fifteen with a large fortune to the son of a nobleman's steward who was under twenty, although they were ignorant of her being a ward of Court. — *Lord Chancellor.* "Lord Ossulston, by his affidavit, admits, that at the request of Pearson he procured Barry, the parson, to celebrate this marriage, and he denies knowledge of any orders of the Court. It is positively sworn by the petitioner that the match was made by the contrivance of Pearson with Lord Ossulston; that Lord Ossulston went to London and fetched the parson from the Fleet for a fee of one hundred guineas, and that Lord Ossulston being present at the marriage gave away the lady as a father, in a room at Up Park. Barry, the parson, having been committed by a former order, let Pearson, Mary Tench the maid servant, and Lord Ossulston be now committed to the Fleet for their contempt." †

Law of Paraphernalia.

One of the nicest points which ever came before Lord Hardwicke, was how a widow is affected by her husband in his life time having pledged her paraphernalia. Lord Londonderry had given Lady Londonderry a diamond necklace, and afterwards pledged it as a collateral security for 1000*l.*, with a power to sell it for 1500*l.* After his death the question arose whether the necklace ought not to be redeemed out of his personal estate for her benefit. — *Lord Chancellor.* "The necklace is not to be considered as given for the separate use of the wife. I have admitted that a husband may make such a gift, but where he expressly gives jewels to a wife to be worn as ornaments of her person, they are to be considered only as *paraphernalia*, and it would be of bad consequence to consider them otherwise, for if they were a gift to her separate use, she might dispose of them absolutely in his life time, which would be contrary to his intention. But in this case

* 2 Atk. 157.

† *Edes* v. *Brenton*, West. 348. The Marriage Act was not passed till 1753.

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it will be the same to Lady Londonderry, if she can prove that she wore the necklace as an ornament of her person on birthdays and other public occasions,—which it has been proved she did. The question arises 'whether there was an alienation of it by the husband in his life time, the husband having a right to alienate his wife's paraphernalia in his life-time, although he cannot deprive her of them by his will?' Here there was a pledge with a power of sale, and at the husband's death the necklace remained unredeemed and unsold. I am of opinion that this was not an alienation, and that his personal estate being sufficient to redeem the pledge, and pay all his debts, she shall be entitled to have it redeemed and delivered to her." *

Woman holding property under her husband's will, to go to another if she marries again, bound to answer a bill of discovery as to whether she has taken a second husband.

This decision in favour of the female sex was supposed to be overbalanced by the alleged harshness of another, whereby a lady was compelled, in answer to a bill of discovery, to disclose a fact which subjected her to a forfeiture. A husband left the whole of his personal estate to his wife, "but if she married again, his brother to have a moiety of it." The brother filed a bill against her for an account of the moiety, and for a discovery whether she was married again? She demurred to the discovery, relying on the case of Chancy *v.* Tahourdin, 1 Atk. 392.—*Lord Chancellor.* "That was a forfeiture of the whole portion, the testator being a father bound by nature to provide for a child. This is to be considered a conditional limitation to the wife if she remained single, and she must show whether the condition has been performed. She must answer, whatever may be the consequence." †

Bond given by a married man to a female whom he had seduced, she knowing that he was a married man, void.

He held, with much reluctance, that a bond given for payment of an annuity to a young woman, who, living in the family of a *married man*, had been seduced by him, was void. — *Lord Chancellor.* "This case is new. The Court has sustained such a bond as *præmium pudicitiæ*, where a young woman previously of good character, has been provided for by her seducer,—their cohabitation ceasing. But I know no instance occurring where the obligor was a married man. This circumstance differs the case from those in which

* 3 Atk. 393.

† 3 Atk. 260.

the Court has gone great lengths to make provision for such unfortunate persons. When a young woman appearing to be modest submits to improper solicitation, she is much to blame, but if the man be single, she knows the crime is not so aggravating as adultery; she may be inclined to suppose that he will be induced to marry her; there may be such a promise which cannot be legally proved; where both parties are single, there is room for presuming such a promise; the subsequent marriage takes off from the enormity of the offence, and in most countries of Europe even legitimates the issue. At all events, under these circumstances, people are aware that they are doing that which is not of such bad consequence in families. Whereas when a man takes and keeps a mistress under the nose of his wife, who thereupon leaves him, that is such a crime as stares every one in the face. The unhappy plaintiff knew too well the situation of her seducer, and if the real consideration for the bond had been stated on the face of it, it would have been void at law. In Lady Annandale *v.* Harris, Eq. Cases Abridged 87., the commerce was wholly after the death of the first wife, and before the second marriage. This Court ought not to sanction what would be of bad example in the case of married persons, and encourage people to enter into agreements of this kind. Had she not known that he was married, as if the wife had been at a distance, or any imposition had been practised upon her, she might be entitled to relief. But she entered into the family, the husband and wife living together, and she caused a separation between them. The Court must endeavour to preserve virtue in families. Let the bill be dismissed,—but without costs." *

The laws of England do not extend to the Isle of Man.

In the great case of the Earl of Derby *v.* Duke of Athol, he decided that the laws of England do not extend to the Isle of Man.—*Lord Chancellor.* "This case concerns a very noble and ancient family, and perhaps the most honourable inheritance any subject of this kingdom can enjoy. Many things are admitted on both sides: that Man is not part of the realm of England; parcel only of the King's

* *Priest* v. *Parrot*, 2 Ves. Sen. 160.

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crown of England; a distinct dominion now under the King's grants, and so for a long time past granted; held as a feudatory dominion by *Liege Homage* of the Kings of England. I am of opinion that the laws of England as such do not extend to it; neither our common law, nor statute law, unless it be expressly named or clearly included in some general legislative enactment. Though the Isle of Man be granted under the Great Seal of England, English law does not necessarily prevail in it. The Great Seal of England operates in all territories subject to the crown of England whatever their laws may be. The King can grant, under the Great Seal of England, lands in Ireland, in the plantations, and in Guernsey and Jersey, because they are all parts of his crown." He then enters at great length into the history of the Isle of Man, showing in a masterly manner how it was to be governed as a separate dominion, subject to the prerogative of the King and the supreme power of parliament. *

Lord Hardwicke's decision respecting the effect of attainder for treason on Scotch entailed estates.

There are no regular reports of the decisions in the House of Lords on appeals from the Court of Session till the time of Lord Chancellor Eldon. I am enabled, however, to give a statement of the most important case which came before Lord Hardwicke from Scotland, that of "Gordon of Park," respecting the effect of attainder for treason on the descent of entailed estates. Sir James Gordon had entailed the Barony of Park, with prohibitory, irritant, and resolutive clauses, on his eldest son William, and his heirs male; whom failing, on his second son James, and his heirs male, &c. After the death of the entailer, his eldest son, Sir William Gordon, engaged in the rebellion of 1745, and escaped to France, but was attainted. The question then arose as to who was entitled to his estate,—the Crown, or his younger brother Captain James Gordon, who had remained loyal to King George? An act of the Scotch Parliament, passed in 1690 †, had provided that attainder for treason should not affect entailed estates; but the United Parliament had introduced the English law of treason into Scotland, and

* 2 Ves. Sen. 337—357.

† C. 33.

enacted that "all persons convicted or attainted of high treason in Scotland should be subject and liable to the same corruption of blood, pains, penalties, and forfeitures, as persons convicted or attainted of high treason in England." * The Scotch Judges unanimously held that Sir William Gordon having forfeited the estate, it should immediately, as if he had died without issue male, descend to his brother James. The Lord Advocate having appealed against this decision, Lord Hardwicke called in the assistance of the English Judges, to whom he submitted certain questions, moulding the terms of the Scottish tenures as nearly as he could to those of England. He then, in accordance with their opinion, advised a reversal, saying, "I am sorry to be obliged to differ from the unanimous decree of the Supreme Court in Scotland, so much entitled to our respect. But the learned senators of the College of Justice are not very familiar with our law of treason, which has been introduced into their country, and they may unconsciously be inclined to adhere to the law which they had to administer before the Union. I do not see how the attainder of the heir of tailzie in possession can be considered as equivalent to his death without issue. He is not a mere tenant for life; he is the 'fiar:' the fee is in him, and our doctrine of remainders and reversions does not strictly apply; — so that, on a rigid construction of the 7 Anne, c. 21., on his attainder, there is room for contending that there ought to be an absolute forfeiture to the crown of the entailed lands, to the entire extinction of the rights of all substitutes in the entail. But the milder interpretation of the Act will be to hold that the heir of tailzie has in him, and forfeits by his attainder, the same interest as tenant in tail in England — so that upon his attainder the Crown takes the lands during his life-time and while there exists issue who would take by descent through him, — leaving other substitutes in the entail unaffected. I would, therefore, advise your Lordships, reversing the interlocutor appealed against, to declare that the Barony of Park is forfeited to the Crown during the life of Sir William

* 7 Anne, c. 21.

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Gordon, and during the existence of issue male who through him would be inheritable thereto — but that upon his death and the extinction of such issue, the remainder in favour of the respondent Captain James Gordon will take effect." *

But I am sadly afraid that however interesting such matters are to the jurisconsult, they are very tiresome to the bulk of my readers, male and female; and I hasten to survey Lord Hardwicke in another sphere.

Censure upon as regards law reform.

It is mortifying to consider, that although he deserves such high commendation for his upright and enlightened administration of justice, he cannot be praised for any attempt to amend our institutions by legislation. During the twenty years of his sway the act requiring legal proceedings to be carried on in the English language, passed by Lord Chancellor King, still remained the most recent improvement, and the principle was acted upon which was soon after brought forward by Blackstone in his "Commentaries," that our whole juridical system had reached absolute perfection. The only change introduced was a great addition to the severity of the penal code. Many felonies were now rendered capital, which before were only liable to be punished by transportation, and many frauds which at Common Law were simple misdemeanours, such as forgery of deeds and negotiable instruments, being made capital felonies, in practice were always punished with death — although this bloody code did not reach its full measure of atrocity till towards the close of the reign of George III., when it was defended and eulogised by Lord Eldon.

Commission to inquire into

In pursuance of an address of the House of Commons to the Crown in the year 1732, a commission had been ap-

* Morr. Dec. 1728.; Kames's Elucidations, 371.; Sandford on Entails, 177. Lord Kames highly disapproved of this decision, saying, "a remainder with respect to forfeiture is introduced into our law hitherto unknown in Scotland;" and Lord Hardwicke had a sharp correspondence with him upon the subject. But I know not that a better rule could have been laid down. — A curious question subsequently arose as to the application of it. Sir William Gordon, after his attainder, married, and had two sons born abroad. On his death, Captain James again claimed the estate, on the ground that as these children were aliens, and could not inherit, the substitution in his favour had come into effect. The Court of Session decided against him; but he succeeded on an appeal to the House of Lords; and, in the life-time of his nephews, became "Laird of Park."

pointed to inquire into all fees in all the superior Courts both of Law and of Equity, and after a period about as long as was employed in the siege of Troy, the Commissioners presented a report in which they point out various abuses, and suggest various amendments — with very great tenderness to existing interests. I will present as a specimen — what they say of the practice of writing only a few scattered words on a folio sheet of paper, the fee being so much a folio — laughed at by Hudibras.

Fees in courts of justice after ten years makes a report.

> "——To make twixt words and lines large gaps
> Wide as meridians in maps,
> To squander paper and spare ink,
> Or cheat men of their words, some think."

"A great part of the expence of the suitors," says the timorous report, "arises from the copies of the proceedings, the bills, answers, interrogatories, depositions, orders, and decrees, being often very long, and the copies of them necessary to be taken by the complainant or defendant, and sometimes by both, having but six words to a line and fifteen lines in a sheet, the expence of taking out such copies amounts to a very great sum of money. How this great expence to the suitor may be lessened, whether by reducing the length of such proceedings, by leaving out the immaterial and unnecessary parts of them, or by inserting more words in a line or more lines in a sheet, for which there is more than sufficient room in every sheet, or by reducing the fee usually taken for such copies, or by what other ways or means, the Commissioners humbly submit to the consideration of those who may be better able to judge, and have authority to provide suitable expedients and remedies, and to establish proper regulations whereby justice may be administered to your Majesty's subjects with as much despatch and as little expence as conveniently may be."*

Abuse of writing only a few words on a folio page of law proceedings to increase fees.

But the prevailing abuses withstood all the long labours of the Commissioners; — "Non anni domuere decem;" — no act of parliament was passed, no orders were made to correct them. The length of the proceedings might have been re-

This abuse pointed out by the report, but allowed to

* This Report, bearing date 8th November, 1740, is signed by Lord Hardwicke himself, who had been appointed a commissioner when at the bar.

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remain unremedied.

duced; more words might have been inserted in a line and more lines in a sheet, and the fees for the copies might have been lowered. But the proceedings continued equally prolix; neither were there more words in a line or more lines in a sheet; the copy money per folio continued equally exorbitant, and no ways or means were discovered to save the suitor from being plundered. The Judge and all the officers of the Court were paid by fees, and Lord Hardwicke could not have made a vigorous effort to regulate them without some sacrifice of his own pecuniary gains, and without danger of incurring ill will from others.

Lord Hardwicke's laudable exercise of judicial patronage.

That I may clear the way for following him in his political career, which must be more interesting to the general reader, I have now only to consider how he executed that most important function of a Chancellor — the appointment of Judges and law officers of the Crown, — and here he is entitled to unmixed praise. Lee, Willes, and Parker, with able puisnies, presided satisfactorily under his auspices in the Common Law Courts, and the bar could not have furnished better men for the officers of Attorney and Solicitor General than Ryder, Strange, and Murray. It is objected to him that "he prevented the creation of law Lords whereby his power in the House of Peers he apprehended might be diminished;" "the peerage of Lee, Ryder, Willis, and even of Parker, Chief Baron," says Cooksey, "though acknowledged due to their long services of the state, were delayed or denied: thus he remained the sole law Lord during the whole term of his Chancellorship."* There is here, however, considerable exaggeration. Ryder's patent was too long delayed, and he unfortunately died before the Great Seal was put to it. The others, though respectable men, had never gained great distinction in parliament or in their profession, and law peerages ought not to be (as they have sometimes been) wantonly and inconveniently multiplied.

Charge against him of stopping the promotion of other Judges to the peerage that he might be the sole law Lord.

Lord Hardwicke in politics.

When we view Lord Hardwicke as a magistrate, it might be supposed that he could have had no political functions to disturb him, but now that we are to view him immersed in

* Cooksey, 76.

politics, we might suppose that he had nothing to think of but how he might please the King, and not offend the heir apparent — how he might intrigue to keep up ministerial majorities — how he might assist in modelling measures to make the session come smoothly to a conclusion — how on a rupture in the cabinet he might reunite some of its scattered fragments, — and how he might make all things work together for his own aggrandisement. It will be found that to advance the interests of his party and of his family he displayed great shrewdness and dexterity. His character as a statesman, about which he was very solicitous, is more doubtful. "Men are apt to mistake," says Lord Chesterfield, "or at least to seem to mistake, their own talents — in hopes, perhaps, of misleading others to allow them that which they are conscious they do not possess. Thus Lord Hardwicke valued himself more on being a great minister of state, which he certainly was not, than upon being a great magistrate, which he certainly was. All his notions were clear, but none of them were great. Good order and domestic details were his proper department: the great and shining parts of government, though not above his parts to conceive, were above his timidity to undertake."

Disputes between George II. and Frederick Prince of Wales.

From the disputes in the Royal Family, he had a very difficult and disagreeable task assigned to him at the very moment when he received the Great Seal. George II., who had been disliked by his own father, actually hated his own son. Prince Frederick being at last permitted to come to England long after the accession of his family to the throne, now headed a powerful party in opposition to the government, and was banished from court, without being allowed a sufficient income decently to maintain himself and his wife and children. A motion was to be made in the House of Commons by his friends, for an address to the crown to assign him 100,000*l.* a year out of the Civil List. According to the court scheme, this was to be counteracted by a proposal to parliament to vote him 50,000*l.* a year, and at the same time he was to be reprimanded for his factious proceedings. A controversy arose with respect to the bearer of the reprimand, and the matter happened to be debated at the

Lord Hardwicke selected to

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deliver a reprimand from the King to the Prince. Feb. 21. 1737.

very cabinet at which Walpole had announced that Lord Hardwicke was to be the successor of Lord Talbot. Some one proposed that the new Chancellor should be the messenger. This was unanimously agreed to, and he was summoned to attend a council next day at twelve o'clock to receive the Great Seal. Accordingly, while he was waiting in the ante-chamber at St. James's, with the Dukes of Newcastle and Argyle, the Earl of Wilmington, and other Privy Councillors,—Sir Robert Walpole came out of the King's chamber in a great hurry, holding a paper in his hand, and read to them the draught of a message, in his own handwriting, and acquainted them that "it was the King's pleasure that the Lord Chancellor, accompanied by the Lord President, Lord Steward, and Lord Chamberlain, should immediately carry it to the Prince." Lord Hardwicke, expecting nothing but smiles and congratulations on this auspicious day, was greatly shocked at such a commencement of his cancellarian career, and wished that he had allowed Fazakerley to be made a Whig. What added to his embarrassment was, that the King was then labouring under a low fever, from which some foretold that he would not recover. To the expressions in the reprimand "the undutiful measures which his Majesty is informed your Royal Highness intends to pursue," he positively objected; but it was replied by the minister that the King insisted on the word "undutiful," and that he had with great difficulty been dissuaded from using harsher terms. A concession was made, however, by changing "intends" into "*hath been advised* to pursue." Still Lord Hardwicke took Walpole aside and expostulated with him on the hardship of making such a painful errand his introduction to the heir apparent. The Minister answered that he had hinted this to the King as far *as he durst venture in so nice a case*, but the King prevented all further discussion, by exclaiming, "My Chancellor shall go." To soften matters, it was agreed that the whole cabinet should attend in a body, when the message was to be delivered, but Sir Robert contrived to slip away —on pretence that his presence was indispensably required in the House of Commons. Lord Hardwicke was then admitted into the King's closet, and received the Great Seal,

with many gracious expressions of royal favour, but without a word respecting the reprimand. Having taken the usual oaths he retired to make himself, as he apprehended, for ever odious to the Prince, who might in a few weeks be upon the throne. He had a wonderful escape, however, from the "forlorn hope" on which he had been put; Frederick considered it politic on this occasion to be very civil to the Chancellor, and to use dutiful language towards the King; and he was swept off to an early grave, while the Great Seal remained in the firm grasp of its present possessor. *

Feb. 23. 1787.

A debate on the subject arose in the House of Lords the very day that Lord Hardwicke took his place on the woolsack as Chancellor; but he left the defence of the government to the Duke of Newcastle, and took no part in the proceedings beyond communicating the King's message to the Prince, and the Prince's answer. †

Bill to punish the citizens of Edinburgh for the murder of Captain Porteous.

The first occasion of the new Chancellor's coming forward in debate was to defend the bill to punish the citizens of Edinburgh for the murder of Captain Porteous,—by repealing the city charter, by razing the city gates, and by abolishing the city guard. This measure being furiously attacked by the Duke of Argyle, who, in answer to the threat of the Queen as Regent to turn Scotland into "a hunting ground," had said "he must go down to prepare his hounds," Lord Hardwicke justified all its enactments, observing, in answer to the argument derived from the ancient loyalty of the citizens of Edinburgh, that "the merit of ancestors in a former age can never atone for the degeneracy of their posterity." This was considered by Macullamore a reflection on himself and his clan, and called forth from him a statement of their services in placing and retaining the present royal family on the throne. The Lord Chancellor declared, "that the noble Duke had mistook his meaning; that he entertained the highest opinion of the noble Duke's candour and loyalty, as well as of his talents and gallantry, and that it never was his intention to insinuate any thing to the disadvantage of any Campbell whatsoever." The division was in favour of the

* Com. Walp. iii. 537.

† 9 Parl. Hist. 1448.

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government, but the bill was so flagrantly unjust, and was so strenuously opposed by all the Scotch members in both Houses of Parliament, and by the whole Scotch nation, that the minister prudently abandoned it, and it was turned into a bill to impose a fine of 2000*l.* on the city of Edinburgh for the benefit of Captain Porteous's widow. "All these fierce debates ended only in making the fortune of an old cook-maid, for such had Mrs. Porteous been before the Captain made her a lady." *— A melancholy event was impending, from which important consequences were apprehended.

* See "Tales of my Grandfather," and "Heart of Midlothian." I cannot justify the manner in which the Captain came to his end, but no true Scotsman can sincerely regret it.

# CHAPTER CXXXII.

## CONTINUATION OF THE LIFE OF LORD HARDWICKE TILL THE RESIGNATION OF SIR ROBERT WALPOLE.

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A.D. 1737. Death of Queen Caroline.

In the end of this year Lord Hardwicke was much alarmed by the death of Queen Caroline, on whose great influence with the King, notwithstanding his infidelities to her, the ministry was supposed chiefly to depend; but her dying recommendation of Walpole sunk deep into the King's mind, and his Majesty's health being completely re-established, the opposition party melted away. Horace Walpole says, that, "on the Queen's death, Lord Chancellor Hardwicke went deep into the scheme of governing through the Princess Emily; this scheme was to be built on the ruin of Sir Robert Walpole, who had no other trouble to make it miscarry than in making the King say, *Pho!*" * But this is a mere imaginary plot. From the hour of Caroline's decease the King lavished greater kindness than ever on Walpole, and it was not till long after that Newcastle or Hardwicke thought of his removal.

May 2. 1738.

The assailants of the government in the House of Lords, although not numerous, were active and unscrupulous. When the "Mutiny Bill" was brought forward in the session of 1738, Lord Carteret moved that the number of the forces to be kept on foot for the British empire should be reduced from 18,000 to 12,000 men; and he was warmly supported by Lord Chesterfield and Lord Bathurst, who, like him, declaimed against the danger to liberty from a standing army, laughed at the idea of there being longer any thing to be apprehended from the Jacobites, and contended that the best mode of allaying the prevailing discontents would be by disbanding every regiment in the service. The Duke of Newcastle made such a sorry figure in attempting to answer their sophistries, that before the debate closed the Lord Chancellor thought it proper to

* Memoirs of Ten last Years of George II.

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Lord Hardwicke's speech for keeping up the army.

leave the woolsack, and he made a speech which, even from the imperfect report of it, appears to have been marked by uncommon excellence. Having pointed out the serious apprehension to be entertained from foreign invasion, and still more from internal disturbances, he thus proceeded: "But, say some Lords, '*all the discontents we now complain of arise from your keeping up such an army: Disband but your army, or a great part of it, and the people will be satisfied.*' This, in my opinion, my Lords, would be like a man throwing away his arms in order to be reconciled with his enemy,—which I am sure no man of courage or prudence would do. The recent riots which caused such alarm in the metropolis, and all over the country, have been produced by useful acts of the legislature for the erection of turnpike gates, and to put down the beastly excesses of gin-drinking. The real danger to liberty arises from the machinations of desperate and ambitious men, who wish at all hazards to get into their own hands the supreme power of the state, under pretence of being attached to the exiled royal family, and who are ready to turn to their own account the delusions which may prevail among the people. If the noble Lords who ridicule our apprehensions feel none, my apprehensions are only the greater. My Lords, I warn you, that before long an attempt will be made to subvert our present happy establishment. Notwithstanding the uninterrupted peace and increasing prosperity which the nation has enjoyed since the accession of the present royal family, for reasons which I cannot explain, discontents with the government are now general and deep, and without prudence and energy on our part these discontents will soon lead to open rebellion. The violence, the oppression, the subversion of law, liberty, and religion, which made the nation for a brief space almost unanimously concur in the Revolution are forgotten; many are now so ungrateful as to censure that glorious event; many are so silly as to think, that by recalling the exiled family they may get rid of all fancied grievances, and continue to enjoy all the securities for the church and the constitution which the Revolution has achieved. While the late King James was alive, the doctrine of 'divine right' could not be acted upon without opening

our arms to receive him who, by his blind bigotry, had brought us to the brink of destruction; whereas now the scene is changed, and delusive hopes may be entertained from a young Prince who personally has inflicted no wrong, although all reflecting men are aware that his family in their exile have learned nothing and forgot nothing, and that Popery and slavery would be recalled along with them. The small army which is asked is indispensably necessary for the safety of the well-disposed. They will cherish it, — while it is hated by the seditious, because it prevents them from spreading war, bloodshed, and desolation over the face of their country." * As soon as the Chancellor had resumed the woolsack the House divided, when the motion was negatived by ninety-nine to thirty-five.

Plan of the opposition to involve the country in a war with Spain.

After this defeat the opposition made a much more skilful, though a very profligate, move. Because the Spaniards objected to our carrying on a contraband trade with their American colonies, most frightful stories were propagated of their cruelty to our countrymen, of which "the fable of Captain Jenkins's ears" was a fair specimen; and, under colour of taking revenge, there was an eager desire in the nation to fit out expeditions for the purpose of capturing their galleons, and seizing possession of their gold mines. Here was an opportunity to bring obloquy upon the pacific Walpole, who was represented to be "a furious mastiff to his own countrymen, but a fawning spaniel to the Spaniards." His opponents determined to give him only the alternative of a Spanish war or resignation, and it was generally believed that, fond as he was of power, he was fonder of peace, and that his political extinction was at hand. With this view certain resolutions were moved in the House of Lords, affirming the outrageous conduct of Spain, denying the right of search which she claimed, and praying that English commerce might be protected against her aggressions. The task of combating these was cast upon the Chancellor, but he did it feebly and ineffectually, hardly venturing to go further than to point out that the reso-

* 10 Parl. Hist. 555. 561.

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lutions were so framed as to condemn the belligerent right to search neutral vessels which might be carrying contraband of war — a right essential to the maintenance of our own naval ascendency. Finding that he was making no impression on the House, he withdrew his opposition, and the resolutions passed unanimously.*

Debate on Convention with Spain to settle differences.

In the following session the same policy was pursued by the opposition leaders, whose great object was to attack a preliminary convention with Spain, by which Walpole had hoped that all differences might be adjusted, and peace might be preserved. They were now encouraged by the faithless Duke of Newcastle, who thought this a favourable opportunity for becoming prime minister; and it has been represented even that another member of the cabinet, from whom a very different line of conduct might have been expected, joined in the war cry. "The Chancellor, Lord Hardwicke," says Coxe, "a man of moderation, good sense, and candour, was of the same opinion with the Duke of Newcastle, and spoke with such vehemence in the House of Lords against the depredations, and in favour of compulsory measures, that Walpole, who stood behind the throne, exclaimed to those who were near him, *Bravo! Colonel Yorke, Bravo!* †

Vindication of Lord Hardwicke from the charge of encouraging war.

In justice to his memory, however, I am bound to declare that the printed reports of the proceedings of the Lords do not show the slightest foundation for this charge, and if they are to be relied upon, they effectually repel it. He could not resist the motion for hearing witnesses at the bar, so that an opportunity was given for Captain Jenkins's celebrated declaration, that when under the hands of the torturing Spaniards, "he committed his soul to God, and his cause to his country;" but in the debates on the convention Lord Hardwicke appears to have defended it at great length, and boldly and manfully to have attempted to dispel the public delusion. He showed, that while we have a right to the free navigation of the American seas for the purpose of carrying on an unrestrained intercourse with our own colonies, according

Feb. 1. 1739.

* 10 Parl. Hist. 731. 754.

† Coxe's Walpole, iv. 118.; Lord Mahon, ii. 407.

to the laws we are pleased to lay down for the regulation of their commerce, the Spaniards had a right to lay down laws to regulate the commerce of their colonies, and to prevent the carrying on of a contraband trade in violation of those laws. "The mode in which these respective rights shall be enjoyed and enforced," said he, "is the fair subject of negotiation and treaty, and cannot be satisfactorily adjusted by an appeal to arms. For this reason, plenipotentiaries were appointed on both sides, who, if they are permitted to proceed, may be expected to bring about a settlement for the mutual honour and advantage of the two nations. We have just reason to complain of the manner in which, in some instances, the Spaniards have exercised the right which we cannot dispute they possess; but let us try whether we may not obtain indemnity and security, without rushing headlong into a war, the result of which cannot certainly be foreseen, although the vulgar be captivated by the golden prospects which it is supposed to hold out. Having shown that no reasonable objection can be made to the treaty now before us, I must beg your Lordships to consider the present circumstances of Europe, the peculiar situation of this nation, and the relation we stand in to Spain. It must be allowed that no nation ought to enter into a war against a neighbouring nation for any object which may be attained by peaceable means. Of all nations, we ought to be the last unnecessarily and wantonly to engage in hostilities. A great part of our people subsist by trade; our landed gentlemen owe a great part of their yearly revenue to the commerce and manufactures we carry on. Not only should we, by the wished-for war, lose our intercourse with the dominions of Spain, allowed to be so profitable, but a shock would be given to our trade with the rest of the world. Considering our heavy debt and many taxes, we are in no very good condition for engaging in a dangerous, and expensive, and perhaps protracted war. The rest of Europe will not quietly look on and see us make conquests in Spanish America, if the fortune of war should at the outset be in our favour. The Spaniards would soon be assisted by France, and perhaps by other powers we

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little dream of at present. Then think, my Lords, of the numerous party in this country, who, I am sorry to say, are so little solicitous about the national glory, that they are ready to join an invading army, and to receive a despotic master from our natural enemies. Some of them are actuated by the hopes of making or mending their fortunes, some by malice, and an unjust hatred of those employed in the administration. There are many at present disaffected to the government from principle, but their number is decreasing every day. The rising generation see the absurdity and ridiculousness of the prejudices in which their parents were bred, and in a few years we may expect to witness a general concurrence in the principles on which the change of dynasty was found necessary, and a general attachment to good order, and to the cause of civil and religious liberty. Prudence will, by-and-by, dictate submission even to the unprincipled, when they no longer see well-meaning men whom they can hope to make the tools of their wicked designs." *

Oct. 1739. National infatuation.

I must, therefore, absolve Lord Hardwicke from the charge of contributing to that madness which, a few months after, took possession of the nation, when Walpole, rather than quit office, agreed to a declaration of war against Spain —when the heir apparent to the throne headed the mob in the streets of London, drinking "*Success to the War!*"— when the treasures of Potosi being grasped in anticipation, and the golden dreams of the South Sea again deluding the public mind, there were greater rejoicings than followed the victories of Blenheim or of Waterloo; and when the conscience-stricken minister exclaimed, "They are now *ringing their bells*; before long they will be *wringing their hands*."

Misconduct and imprudence of Walpole in yielding to the war cry.

With that minister rests, I think, the greatest share of the disgrace of commencing this war—the most unprovoked and unjustifiable in our annals. Walpole's opponents were deeply to blame, and still more were his colleagues, who wished, by making him unpopular, to supplant him; but with him the responsibility rested, and rather than part with

* 10 Parl. Hist. 1048. 1147.

power, even for a time, he consented to involve the country in hostilities which he knew to be unjust, and which he expected to be disastrous. Had he honestly resisted, the nation would speedily have been restored to reason, and he would have been restored to power. By tardily yielding to the public delusion, he did not recover the popularity he had lost by resistance, and he was, ere long, forced into permanent retreat. Fit punishment, likewise, fell upon the nation; for, during the contest, although the heavy calamities which several times seemed impending were averted, the military enterprises which were undertaken produced disappointment and disgrace; we were indebted to chance, and the blunders of our enemies, that our shores were not trod by invading armies; a Stuart prince being recognised by all Scotland, was within a few days' march of the English metropolis, where there were many friends to receive him; and we were finally obliged to agree to a treaty of peace, by which Spain did not make a single concession on the points which had been the pretence for hostilities." *

Lord Hardwicke eager for prosecuting the war with Spain.

When Lord Hardwicke had exerted himself to the utmost to avoid a rupture with Spain, and had delivered a speech which ought to have called forth the exclamation—"Well done, Grotius!" I do not think that he can be much censured for remaining in office, as his resignation would only have made way for some more pliant lawyer; but I must confess that I think he would have done better by remaining quiet in parliament and watching a favourable opportunity for the restoration of peace. But Sir Robert having for the present out-manœuvred his opponents by going over to the war party, the now blustering Chancellor strenuously defended a subsidy to Denmark, that she might assist us in the quarrel, and he exclaimed,—"Whatever others may say who advocate for-

* This is a case in which, as the lawyers say, we have "confitentes reos"—all the accused parties pleading *guilty*. Walpole at the time, with his usual openness, admitted that he was doing wrong. "Some years after," says Burke, "it was my fortune to converse with many of the principal actors against that minister, and with those who principally excited that clamour. None of them, no, not one, did in the least defend the measure, or attempt to justify their conduct. They condemned it as freely as they would have done in commenting upon any proceeding in history in which they were totally unconcerned."—*Regicide Peace.*

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bearance, I am for instantly entering upon action."* He had for some time been regarded as the organ of the government in the House of Lords, no weight being attached to what fell from the Duke of Newcastle, who was ostensibly at the head of it. His Grace himself seems to have been aware of his own insignificance there, and thus writes to the Chancellor:—"It is no disagreeable circumstance in the high station in which your Lordship is, that every man in the House of Lords now knows that yours is the sense of the King's administration, and that their interest goes with their inclinations when they follow your Lordship."†

His speech on the liberty of the press.

During the Spanish war a discussion arose on a subject of more permanent interest—the liberty of the Press,—when Lord Hardwicke delivered a speech with which he had taken great pains, and which is peculiarly interesting as coming from one who had been ten years Attorney General, and was so long afterwards at the head of the law. With a view as it was thought of intimidating Pope, who had cruelly lampooned Lord Hervey‡ and other Peers, and kept the whole House in a state of apprehension, a complaint was made against§ a very inferior poet, Paul Whitehead, who had recently published a satire called "MANNER," reflecting upon several Peers, and whose commitment to Newgate would not have excited much public sympathy. The author absconded; but Dodsley, his publisher, appearing at the bar, a motion was made that he should be taken into the custody of the Usher of the Black Rod, which was opposed by Lord Carteret and Lord Abingdon, on the ground that such a proceeding was contrary to the liberty of the Press. *The Lord Chancellor.*—"My Lords, the liberty of the press ought to be sacred with every Englishman, and I dare answer for it will ever be so with your Lordships. But I am afraid that there is nothing less understood than the nature of that

* 10 Parl. Hist. 1373. 1383. 1412. 1420.

† The Duke of Newcastle to Lord Hardwicke, 1739.

‡ "Let SPORUS tremble! What? that thing of silk,
SPORUS, that mere white curd of ass's milk," &c.

§ It is said that Pope really was frightened by the "brave orts at the pridge," and he certainly was more cautious afterwards in meddling with high names, although his malignity to Grub Street continued to increase.

liberty. I have often, my Lords, desired an opportunity of delivering to your Lordships my sentiments upon this subject, and I may be excused if I embrace the present. It is said that the liberty of the press is about to be invaded. I know, my Lords, that the liberty of the press is generally taken for a liberty to publish every indecency against the most respectable persons either in public or in private life; and so strongly does this notion prevail, that I have never known an instance of a libeller being prosecuted without a loud cry of *oppression*, he being considered an impersonation of the liberty of the press. But has there been introduced into the law of England since the invention of printing, a right of publishing to the world any defamatory matter to the prejudice of superior, inferior, or equal? Before the art of printing was known in Europe, learning was confined to a very few. At that time the copiers of books were a separate body of men, and were under particular regulations in different countries. When printing was introduced these regulations necessarily fell to the ground, and every one for a while could communicate his thoughts to the world on any subject till printing under new regulations became an affair of state. Thence, my Lords, arose the expression of THE LIBERTY OF THE PRESS. But, my Lords, in England the mode of publication made no change in the law of defamatory libel. The press acquired no liberty which was not known in the most remote times. If any body, my Lords, is of opinion that authors acquired any new privileges when printing was discovered, he ought to prove either that the old laws on that subject were repealed, or that new ones were made in favour of typographical slander. Character must be protected as much as property, and an invasion of either demands an award of compensation, and punishment for the sake of public example. It is true, my Lords, that in bad reigns very great severities have been inflicted on authors and printers for publishing what was harmless or useful; but this only proves that the law was abused by power. The law of treason, allowed in this country to be wise and merciful, was abused much more; but for that reason a man may not imagine the King's death,

or levy war against him with impunity. I am very sensible, my Lords, of how much use the press was at the time of the Revolution, but the authors who then espoused the side of liberty, advanced nothing that was not agreeable to the constitution; they were warranted by law for what they wrote, and they had the sense of the nation on their side. I must add that the authors, who are so justly praised for supporting the Revolution, communicated their sentiments with the greatest deference to the persons and characters of their adversaries, without any mixture of malice or calumny. Let not modern libellers, when called to account in a legal manner, compare the present government to that of Charles II. or of James II., till they prove that they write with as much caution and as much decency as those who then lawfully availed themselves of the liberty of the press to defend the constitution of their country. The libel we are now considering is of the more virulent quality, as the noble Lords libelled could not have given any just cause of offence to the author, probably not knowing him by sight, and never having heard of his name till it was impudently affixed to this infamous publication. I therefore think it deserves all the severity of your Lordships' censure." Lord Talbot (son of the Chancellor) pithily answered:—"My Lords, if this be so, in Heaven's name let those aggrieved by this libel have recourse to the inferior Courts of justice, and do not let such a charge lie against us, as that we are judges, jury, prosecutors, and parties in the same suit."

On a division the motion was carried by 72 to 32, and I am only surprised that the minority was so large, or that any noble Lord had the courage to divide the House on such a question. Paul Whitehead's dull poems had nothing to do with the proceedings of their Lordships as a branch of the legislature, while he made free with the manners of individual Peers. But at this period no one ever thought of questioning any decision of the Lords upon privilege, and the standing order passed unanimously, of which I was obliged to move the repeal before I could venture to offer to the world my "Lives of the Chancellors,"—"that no one presume to publish the Lives of any Lords spiritual or tem-

poral, deceased, without the permission of their heirs and executors."* The reckless perversion of privilege to the punishment of private injuries which marked the eighteenth century, is very much to be condemned; but perhaps the other extreme into which we are inclined to run may be more injurious—a refusal to enforce privilege in cases where it is essentially necessary to enable the two Houses of Parliament to exercise the legislative and inquisitorial functions vested in them for the public good.

Danger of abusing and of abandoning privilege.

A. D. 1739. Lord Hardwicke's attack on the opposition Peers.

Parliament being called together in November to vote supplies for the Spanish war, the Chancellor had a very troublesome session. Walpole's enemies now complained of the manner in which the war had been commenced, and the manner in which it had been conducted, and they were particularly fierce against a passage in the King's speech respecting "the heats and animosities prevailing throughout the kingdom," which was construed into a reflection on "his Majesty's opposition," who declared themselves to be the only true friends of loyalty and order. Newcastle, Hervey, Cholmondely, and Devonshire were no match in debate for Carteret, Chesterfield, Bedford, Sandwich, and Argyle, and the Chancellor was frequently obliged to leave the woolsack, and to talk on subjects with which he was by no means familiar. In the debate on the address, the defence of the government rested chiefly upon his shoulders, and he contended with some success that his Majesty, as the father of his people, had a right to exhort all classes to cultivate mutual love and harmony — insinuating at the same time pretty broadly, that the noble Lords, whom no measures would content which they did not themselves originate and guide as ministers, were ready, for their own selfish ends, to endanger the internal tranquillity of the country and the national honour.†

Feb. 23. 1740. His unsuccessful vindication of the govern-

But they had their revenge of him soon after, when the government having by inadvertence sent a message to the House of Commons, respecting supplies for carrying on the war, without any similar message being sent to the

* Standing Orders, No. 113.

† 11 Parl. Hist. 11. 60. 79.

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ment from the charge of slighting the House of Lords.

House of Lords, and the omission being there taken up as a breach of privilege, the Chancellor, in a very elaborate speech, contended that "the message was in the nature of an estimate which was exclusively to be submitted to the lower House:" but he was unmercifully dealt with by Chesterfield and Carteret, who ridiculed with much pleasantry this piece of special-pleading sophistry. The ministers did not venture on an attempt directly to negative the vote of censure moved upon them — but carried the previous question. *

And the unskilful conduct of the war.

The Chancellor was again "turned out for a day's sport," when he had to defend the manner in which Admiral Vernon's expedition had been equipped for the attack on Porto Bello, and the whole conduct of the war. The Duke of Argyle characterised his speech as "a toying with words," and the learned Lord does seem to have treated the subject as if he had been in the Court of Chancery overruling objections to the master's report. The minority rose to 40 against 62.

April 29. 1740. Prorogation.

At last came the delightful task of declaring in the King's name that Parliament was prorogued. Still the Chancellor had not the calm which he expected; for the King being gone to Germany, there were violent altercations among the Lords of the regency, and it was with the greatest difficulty that he could prevent Walpole and Newcastle from coming to an open rupture.

Session 1740-41.

In the ensuing session of Parliament, he was called upon repeatedly to speak respecting the conduct of the war, the amount of the forces to be kept on foot, the reinforcements supplied to Admiral Vernon, and the instructions sent to Admiral Haddock †; but I do not think that his speeches, from the briefs delivered to him on these subjects, are of any interest, and I at once proceed to a great crisis in his history — the dismissal of Sir Robert.

Downfal of Sir Robert Walpole.

Horace Walpole imputes treachery to him on this occasion, and considers that the ruin of the minister was brought about by his two colleagues, the Chancellor and the Duke of New-

* 11 Parl. Hist. 449—480.

† 11 Parl. Hist. 615. 629. 700. 756. 760. 773. 813. 901. 918. 1000. 1016. 1027.

castle. After describing their supposed attempt to turn him out on the death of the Queen, he says: "Their next plot was deeper laid, and had more effect; by a conspiracy with the chiefs of the opposition they overturned Sir Robert Walpole, and in a little time the few of their associates that they had admitted to share the spoil." *—Although it is quite certain that against such powerful opponents and such a load of public obloquy, the Premier, having completed his twenty years of absolute sway, could not have stood much longer, I think there is some foundation for the charge against Newcastle, who, willing to submit to any indignity rather than not possess office at all, was ever ready to sacrifice every thing (good faith included) for the chance of increasing his power. "His name," said Sir Robert, "is perfidy." "It would have been strange indeed," writes Macaulay, "if his Grace had been idle when treason was hatching." †

Treachery of the Duke of Newcastle.

> "Ch' i' ho de' traditor' sempre sospetto,
> E Gan fu traditor prima che nato."

However, as far as Hardwicke is concerned, the statement is not only unsupported by any proof, but is contrary to all probability. He had nothing to gain by a disruption of the ministry, and, although he had the good luck to survive it, he must have foreseen the danger that, if Pulteney and Carteret were to triumph, they would insist on naming a new Chancellor. On the only occasion when the subject was brought forward in the House of Lords, in February, 1741, when Lord Carteret made his celebrated motion for an address to the King, praying him "to dismiss Sir Robert Walpole from his presence and councils for ever," Lord Hardwicke defended his chief with much ability, and, seemingly, with zeal and sincerity. We have his speech, as reported by Dr. Johnson for the "Gentleman's Magazine," and though a few epithets may have been added, to give additional point to an antithesis or to round a period, I make no doubt that the report is substantially correct. Notwithstanding what has been said about "Johnson's Debates" being the invention of

Vindication of Lord Hardwicke.

* "Ten last Years of George II.," p. 139.

† Essays, ii. 131.

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his own brain, it now appears, by comparing them with contemporary notes, particularly Archbishop Secker's, that they contain accurately the sentiments, and often the very words, of the different speakers, so that they must have been prepared from genuine information, or (what is more probable still) from the notes or recollection of the compiler, who may have been actually present when they were delivered. On this memorable occasion Lord Hardwicke spoke in answer to the Duke of Argyle, who had gone over the whole of the foreign and domestic policy of the government, pointing out how the autocrat had engrossed all the power of the state into his own hands, and, acting tyrannically at home and feebly abroad, had sacrificed the constitution and the national honour to his own personal aggrandisement. We care little now about the treaty of Hanover, the treaty of Vienna, or the conduct of the Spanish war; and I will not even quote the Chancellor's ingenious comparison between a campaign and "an equity suit, in which the client takes great delight till the solicitor brings in his bill." He seems to have been most happy on the vague charge, much dwelt upon, of Sir Robert having made himself "sole minister." This he likened to the old common-law high treason, called "accroachment," or assumption of the royal authority, for which, till treasons were defined by the statute of Edward III., every great man obnoxious to the ruling faction was prosecuted and beheaded. The weakest part of his case was Sir Robert's (practice, which would not now be endured,) of cashiering military officers who were in parliament—from generals down to cornets—if they voted against the government*: "I shall grant, my Lords, that it is a right maxim for the King not to notice a gentleman's behaviour in parliament with respect to the distribution of those favours which the Crown has to bestow. But even this maxim may admit of some exceptions. We know there is in this kingdom a party of professed Jacobites; we know there is, likewise, a party of professed republicans. I do not say there are any of either of these parties now in parliament; but if they

His speech in defence of Walpole.

* *e. g.* The Duke of Bolton and Lord Cobham deprived of their regiments, and Cornet Pitt dismissed from the Blues.

should get into parliament, if they should there pursue Jacobite or republican schemes, I believe it will not be said that the King ought to wink at such conduct, or that it would be any invasion of our constitution should he turn such officers out of his service. I am far from applying this to any case that has lately happened; nor do I think that his present Majesty ever dismissed any one from his service on account of his behaviour in parliament, for he may have many other reasons for dismissing any officer, civil or military; and if an officer, who otherwise deserves to be dismissed, happens to have a seat in parliament, is he therefore dispunishable? But whatever reasons his Majesty may, at any time, have to make use of his prerogative to dismiss an officer from his service, I am convinced he will not allow any minister to advise him to make use of this prerogative for preventing a member's declaring his sentiments freely about any measure of government, *provided he does it with that decency which is due to the Crown, and without any factious or seditious manner of expressing himself upon the subject under debate.*" So the opponents of Sir Robert Walpole must be Jacobites or Republicans;— and the Chancellor sanctions the doctrine of the Judges in the time of Charles I., that "Parliament men are not to be questioned before the Council for what they say in Parliament, *provided it is said in a parliamentary way.*" Sir Robert had a majority of 108 to 59*, and all the hope of upsetting him was from proceedings in the lower House after the dissolution of Parliament, which was now impending.

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Dec. 8. 1741.

These discussions had a powerful effect to weaken the minister out of doors; the elections went against him — particularly in Scotland, where it used to be supposed, by their "second sight," they could see the shadow of a coming change; and when the House of Commons met, the appointment of "Chairman of Ways and Means" being carried against him, it was plainly seen that his official end was rapidly approaching. The old statesman made a gallant struggle; but the divisions on election-petitions then thought fair opportu-

New Parliament "Second sight" of the Scots.

* 12 Parl. Hist. 1047—1223.

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Feb. 2. 1742.

nities for a trial of party strength, continuing to go with the opposition *, he saw that he must soon be in a minority on all questions, and his colleagues, and his own family, telling him that he could stand out no longer, he announced his determination to resign.

* The last of these was the Chippenham case, in which there was a majority against him of 16 — 241 to 225.—Nothing shows so strikingly how these were considered party questions, as the anecdote of Walpole's demeanour while the tellers were ascertaining the numbers. "Anticipating his fate, but bearing it with his usual fortitude and good humour, he beckoned to the opposition member for Chippenham, whom he had attempted to eject, to sit by him, spoke to him with great complacency, animadverted on the ingratitude of several individuals who *were voting against the government*, although he had conferred great favours upon them, and declared that he would never again sit in that house." — *Coxe's Walpole.*

## CHAPTER CXXXIII.

CONTINUATION OF THE LIFE OF LORD HARDWICKE TILL THE BREAKING OUT OF THE REBELLION OF 1745.

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Lord Hardwicke's anxieties on the dismissal of Sir R. Walpole.

Lord Hardwicke was for some time in a state of much anxiety. He dreaded that the termination of his official career had arrived, and he regretted that he had ever left the secure position of Chief Justice of the King's Bench. Whatever Newcastle's expectations might be, he certainly had not made terms with the opposition leaders, and the probability was that he and those most intimately connected with him, must share Walpole's fate. Strange to say, the victors had formed no plan to improve the victory for which they had so eagerly fought, and which they had for some time anticipated. Meanwhile, the nation was in a state of unexampled ferment. All classes had been taught to look forward to the fall of Walpole as the cure for the evils of which they complained, and as the certain means of gaining their own favourite measure for reforming and governing the State. The counties and great cities sent instructions to their representatives all equally peremptory, but of very different import,— some insisting that the Septennial Act should be repealed, and that parliaments should be triennial or annual,—some that all placemen, as well as pensioners, should be excluded from sitting in the House of Commons, — some that all offices should be in the gift of the House of Commons,— more, that Walpole's head should now answer for his misconduct, — but most of all, that the decay of trade and other national calamities might be immediately remedied by an act to forbid the exportation of wool! The King and his private advisers, of whom the retiring minister, now Earl of Orford, was one, saw that the only chance of preserving the semblance of government or order in the country was to call in Pulteney, though personally so odious at Court that he had not been

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there for many years*, and to allow him, according to his own fancy, to form a new administration, of which it was of course supposed that he would himself be the head. The Duke of Newcastle and Lord Hardwicke were appointed to be the bearers to him of the keys of the royal cabinet. They opened the conference by saying, that "the King, convinced that Sir Robert Walpole was no longer supported by a majority of the House of Commons, had commanded them to offer the places held by that minister to Mr. Pulteney, with the power of forming his own administration — on the sole condition that Sir Robert Walpole should not be prosecuted." Pulteney refused this condition, saying, that "even if he himself had been inclined to agree to it, it might not be in his power to fulfil his engagement, *the heads of parties being like the heads of snakes, carried on by their tails.*" The confusion increasing, the Chancellor and the Duke, at a subsequent meeting, declared that they were commissioned by the King to repeat the former offers, without urging the condition of not prosecuting the fallen minister, and his Majesty only requested that if any prosecution was commenced against Sir Robert, Mr. Pulteney, if he did not choose to oppose it, would at least do nothing to inflame it. Pulteney answered, that "he was not a man of blood, and that, in all his expressions of pursuing the minister to destruction, he had meant only the destruction of his *power*, but not of his *person*; though he was free to own that he thought some parliamentary censure at least ought to be inflicted for so many years of maladministration." Then, to the infinite relief and delight of the messengers, he declared that "although he demanded an alteration of men and measures, and that the strong forts of government should be delivered into the hands of his party, viz., a majority in the cabinet, the nomination of the boards of Treasury and Admiralty, with the restoration of the office of Secretary of State for Scotland,— he did not require an entire sweep of all who held place under the Crown, and that he would beg the two noble Lords, who had so courteously borne to him the gracious pleasure of the King, to retain their

Formation of the new administration.

* His name had been struck out of the list of the Privy Council, and he had been denied the commission of the peace.

respective situations of Chancellor and Secretary of State." To their utter amazement, he added: "As the disposition of places is in my hands, I will accept none myself: I have so repeatedly declared my resolution on that point, that I will not now contradict myself." He then named the Earl of Wilmington First Lord of the Treasury, Sandys Chancellor of the Exchequer, Carteret Secretary of State, and the Marquis of Tweedale the new Secretary for Scotland; while for himself he required an earldom, and a seat in the cabinet. On this footing the new administration was patched up. The Chancellor had the sagacity to see that it could not last long, but exulted in reflecting that he had not only escaped a great peril, but that among such colleagues, his personal influence must be greatly increased, and that future changes might be under his own control. Pulteney, become "Earl of Bath," soon discovered the error he had committed, and meeting in the House of Lords his former great rival, become "Earl of Orford," exclaimed to him, "We are now the two most insignificant fellows in all England!" He made an effort to regain his position, but he found that his reputation and his power had perished irrecoverably.

Lord Hardwicke's speech against the bill for indemnifying witnesses against Sir Robert Walpole.

The first occasion of the Chancellor coming forward in public, as the organ of the new administration, was in opposing the bill to indemnify witnesses who should give evidence upon the inquiry into the conduct of Sir Robert Walpole. The proceedings against him in the House of Commons had been immediately checked by the objection of those who were examined, that "they were not bound to criminate themselves," and a bill was introduced in very general and sweeping terms, enacting "that all persons who, being examined before either House of Parliament, or any committee of either House respecting the charges against Robert Earl of Orford, should make any discoveries respecting his misapplication of public money, or his improper disposition of offices or other misconduct of the said Earl, while a minister of the Crown, should be freed and discharged from all forfeitures, penalties, punishments, disabilities, and incapacities, to which they might be liable for or by reason or means of any matter or thing which, being examined as

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aforesaid, they should faithfully and truly discover, disclose, and make known. The bill rapidly passed the House of Commons, and, although not only the members of the late administration, but those now in office who had so often cried out for "*Walpole's head*," disliked it, no show of opposition could there be offered to it: but when it came before the Upper House, Lord Hardwicke resolutely attacked it in the finest speech which distinguished his parliamentary career. Having shown how it violated all the rules of evidence established for the protection of innocence, and the danger of offering rewards for convictions, lately testified by a club of miscreants going about from assizes to assizes to invent crimes and to accuse the innocent for the sake of "*blood-money*,"—he pointed out the unprecedented atrocity of the measure in offering a reward for evidence to implicate a particular individual, without the proof or even assertion of any *corpus delicti*. In conclusion, he indignantly exclaimed: "The promoters of this bill, like Pharaoh, require first to know 'what was their dream; and, secondly, what is the interpretation thereof.' But, says a noble Lord*, '*if we have not here a* corpus delicti, *we have what is sufficient for the purpose, a* CORPUS SUSPICIONIS:' a new expression and a new invention—*the body of a shadow*—and on this foundation he calls upon you to build his new superstructure of injustice! In my opinion, my Lords, it is a bill calculated to make defence impossible, to deprive innocence of its guard, and to let loose oppression and injustice upon the world. It is a bill to dazzle the wicked with a prospect of security, and by impunity for one crime to incite them to the perpetration of another. It is a bill to confound the distinctions of right and wrong, to violate the essence of our constitution, to leave us without any rule for our actions, or any protection for our property, our lives, or our good fame. So iniquitous is the law, my Lords, that I would sooner suffer by it than vote for it."† The bill was

* The Earl of Chesterfield.

Parliamentary Reports by Dr. Johnson.

† This pithy conclusion, which we know to be genuine, from the MS. notes of Archbishop Secker taken at the moment, is thus expanded and spoiled by Dr. Johnson:—"So clearly do I now see the danger and injustice of a law like this, that although I do not imagine myself endued with any peculiar degree of heroism, I believe that if I were condemned to a choice so disagree-

thrown out by a majority of 109 to 57. This decision, though made the subject of a violent protest in the Lords, and some inflammatory resolutions of the Commons, was approved of by the public, who began to think that the reports of the secret Committees appointed to inquire into the misconduct of Sir Robert Walpole, disappointed all their expectations by disclosing nothing, *because there was little to be discovered*, and who were now ready to point all their indignation against those who, having pledged themselves to bring him to the block, were treading in his footsteps.

Lord Hardwicke's influence.

Lord Hardwicke's importance (as he had expected) rose considerably in the new government. The Earl of Wilmington, the nominal chief, was a mere cipher. Lord Carteret had great influence, particularly in foreign affairs, but domestic measures were left chiefly to the Chancellor, and he was called upon to defend in debate the treaties that were entered into, and the arrangements which were made for the prosecution of the war and for the defence of the kingdom. The grand object of attack with the Jacobites, Tories, and disappointed Whigs, was the measure of taking 10,000 Hanoverian troops into British pay,—which was so unpopular that many who pretended to be well-wishers to the Protestant succession, joined in the cry of "no Hanoverian King!"

In the spring of 1743 this subject was brought forward in the House of Lords in a very offensive manner by Earl Stanhope (the son of the Minister), who moved an address to the King, praying "that his Majesty, out of compassion to

able, I should more willingly suffer by such a bill passed in my own case than consent to pass it in that of another." A comparison of the two reports, however, will clearly prove that Johnson had either been present at the debate, or had been furnished with very full and accurate notes of the speeches. — 12 Parl. Hist. 637–38. 643—711. When Cave was examined at the bar of the House of Lords as to the Reports which appeared in the "Gentleman's Magazine," he certainly *lied* by representing that he had prepared them himself from his own notes,—with the exception of some speeches sent to him by members. He said "he got into the House and heard them, and made use of a black lead pencil, and only took notes of some remarkable passages, and from his memory he put them together himself." Being asked "Whether he printed no speeches but such as were so put together by himself from his own notes," he answered, "Sometimes he has had speeches sent him by very eminent persons; that he has had speeches sent him by the members themselves." Being asked "If he ever had any person whom he kept in pay to make speeches for him?" he said "he never had." — 14 Parl. Hist. 60. This seems to have been an attempt to get at Johnson, whom he considered himself bound at all hazards to screen.

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Lord Hardwicke's speech to defend the employment of Hanoverian troops.

his English subjects, would exonerate them from those mercenaries who had been taken into pay without the consent of parliament." A furious debate was closed with a very able pleading by the Chancellor, which was much applauded at the time, although it has now nearly lost all its interest. One passage of it might have really called forth the exclamation,—"Well done, Colonel Yorke!" In answer to the observation that, under the present administration, the nation was reduced to poverty and had lost all its spirit, he replied:—"If our wealth is diminished, it is time to ruin the commerce of that nation which has driven us from the markets of the Continent,—by sweeping the seas of their ships and by blockading their ports. Our courage is depressed—not by any change in the nature of the inhabitants of this island, but by a long course of inglorious compliance with the demands, and of mean submission to the insults, of other nations. Let us put forth all the strength we can command, and we are secure. The complaint is, that we have the aid of a friendly state. My Lords, we had auxiliaries in our pay at Blenheim and at Ramillies, and by the same means equal victories may still be won." He then, as a lawyer, combated the objection that this arrangement with Hanover should have been the subject of a treaty,—contending that such a mode of proceeding was impracticable:—"It is well known that no power in this kingdom can enter into a treaty with a foreign state except the King, and it is equally certain that with regard to Hanover the same right is limited to the Elector. This proposed treaty, my Lords, is therefore a treaty of the same person with himself—a treaty of which the two counterparts are to receive their ratification from being signed by the same person, and exchanged by being conveyed from his left hand to his right, and reciprocally from his right hand to his left." He insisted that if Hanover had been governed by another Sovereign wholly unconnected with the present royal family of England, the arrangement would have been highly advantageous to English interests, and would have met with general applause. This speech made Lord Hardwicke ever after a special favourite with George II., who had a high opinion of his own skill in the art of war,

and was now burning to eclipse the glories of Marlborough,— a wish which he soon after thought he had actually accomplished at Dettingen,—although the French claimed the victory, and his undutiful nephew, Frederick of Prussia, represented him as "standing all the day with his drawn sword in his hand, in the attitude of a fencing-master who is about to make a lunge in *carte*." June 27. 1743.

Death of the Earl of Wilmington.

The Chancellor, amidst the plaudits bestowed upon his great Hanoverian speech, was this summer in some anxiety about ministerial arrangements. The Earl of Wilmington was dying, and Pulteney Earl of Bath, finding too late that he could not have influence without office and patronage, made a vigorous effort to succeed him. Such a proposal was highly alarming to Lord Hardwicke, for their cordiality had been fleeting, and their ancient enmity had lately burst out afresh. He therefore stirred up Henry Pelham, brother of his patron the Duke of Newcastle, to claim the office, although this quiet judicious man, with characteristic timidity, shrunk from the dangerous eminence. He farther prevailed upon the fallen minister, who, in his retreat at Houghton, still had great influence over the royal mind, to back the application. On Wilmington's death, the King, who was abroad, sent a despatch announcing his decision in favour of Pelham. Lord Hardwicke was of course asked to continue Chancellor. The Duke of Newcastle then wrote to him, giving a hint, in a very amusing manner, about his over-caution: "My brother has all the prudence, knowledge, experience, and good intention that I can wish or hope in man; but it will or may be difficult for us to stem alone that which, with your great weight, authority, and character, would not be twice mentioned. Besides, my brother and I may differ in opinion, in which case I am sure yours would determine both. There has been for many years a unity of thought and action between you and me; and if I have ever regretted any thing, it has been (forgive me for saying it) too much caution in the execution, which I have sometimes observed has rather produced than avoided the mischief apprehended." Aug. 1743.

Mr. Pelham succeeds him.

For many years afterwards Lord Hardwicke held the

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Great Seal as securely as his fee-simple estate at Wimple. All divisions in the Cabinet were obviated by the dismissal of Carteret, become Earl of Granville, the most accomplished, but the most fantastical politician of that age. The opposition was soon after weakened by the death of Lord Hervey and the Duke of Argyle, and by Lord Chesterfield's acceptance of the vice-royalty of Ireland. Horace Walpole considers that from this time the Chancellor was Prime Minister, saying, "When Yorke had left none but his friends in the Ministry, he was easily the most eminent for abilities." *

Ascendency of Lord Hardwicke.

* "Ten last Years of George II.," 139.

# CHAPTER CXXXIV.

## CONTINUATION OF THE LIFE OF LORD HARDWICKE TILL THE DEATH OF FREDERICK PRINCE OF WALES.

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Rebellion of 1745.

We now approach the rebellion of 1745, with respect to which we shall find Lord Hardwicke acting an important part in the measures to suppress it, — in the trial of the rebel Lords, — and in the new laws framed to introduce order and subordination into the country in which it originated. On the 15th of February, 1744, he brought down a message from the King, stating that "his Majesty had received undoubted intelligence that the eldest son of the Pretender, having arrived in France, was making active preparations to invade the kingdom, in concert with disaffected persons here." Both Houses joined in an address of thanks and assurance of support. This had been drawn by the Lord Chancellor, and concluded in the following eloquent and touching terms: "Loyalty, duty, and affection to your Majesty; concern for ourselves and our posterity; every interest and every motive that can warm or engage the hearts of Britons and Protestants, call upon us on this important occasion to exert our utmost endeavours, that, by the blessing of God, your enemies may be put to confusion; and we do all sincerely and earnestly assure your Majesty, that we will with zeal and unanimity take the most effectual measures to enable your Majesty to frustrate so desperate and insolent an attempt, and to secure and preserve your royal person and government, and the religion, laws, and liberties of these kingdoms."

Message from the Crown, and address.

Sir R. Walpole (Lord Orford's) speech in the House of Lords.

However, a general supineness prevailed, and in about ten days afterwards a rebuke was administered to the Chancellor and his colleagues by the Earl of Orford, who had never before opened his mouth in the House of Lords. By command of his Majesty, they had laid some papers before the House containing information on oath of the arrival of Prince Charles

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Edward at Dunkirk, and of the equipment of a fleet, and the assembling of an army there, for the invasion of England. No motion being made except that "the papers should lie on the table," the Ex-premier said he little expected that any thing would happen to make it necessary for him to offer his sentiments in that assembly, but that he felt he could not continue silent without a crime. "Little did I expect," said he, "that the common forms of decency would have been violated by this august assembly. It is with the greatest surprise and emotion that I see such a neglect of duty. When his Majesty has communicated to you intelligence of the highest importance, is he to receive no answer from the House? As such treatment, my Lords, has never been deserved by his Majesty, so it has never before been practised. And sure, my Lords, if his hereditary council should select for such an instance of disrespect a time of distraction and confusion, a time when the greatest power in Europe is setting up a Pretender to his throne, and when only the winds have hindered an attempt to invade his dominions,—it may give our enemies occasion to imagine and report that we have lost all veneration for the person of our Sovereign. It cannot be thought consistent with the wisdom of your Lordships to be employed in determining rights of private property, when so weighty a case as the title to the Crown ought to engross all your attention.* [Here he looked hard at the Chancellor.] At this instant the enemy may have set foot upon our coasts,—may be ravaging the country with fire and sword, and may be openly threatening us with extirpation or servitude. If this attempt succeed, we shall be ruled over by a viceroy of the French King, and your Lordships who sit in this House with a dignity envied by every class of nobility in the world, will be no better than the slaves of a slave to an ambitious and arbitrary tyrant. Permit me to rouse you from this lethargy. Let the noble and learned Lord on the woolsack submit to the sacrifice of postponing for a little while the calling in of counsel to argue

* On reference to the Journals it appears that one of the only three decrees of Lord Hardwicke ever appealed against was this day heard and affirmed. *Countess of Warwick* v. *Earl of Cholmondeley*.

about costs, while we show so much regard for the great, the universal, the national interest, as to concert a proper form of address to his Majesty, that he may not appear labouring for our safety, while we neglect what is due to our Sovereign and to ourselves." *

An apology being offered, on the ground that, after what had lately passed, no further declaration of their Lordships' sentiments upon the present state of affairs was deemed necessary, the Chancellor moved an address "to give his Majesty the strongest assurances that this House will, at the hazard of their lives and fortunes, stand by and support his Majesty against France, and any other power whatsoever, that shall presume to assist or countenance the Pretender, or any of his descendants or adherents, or to invade or commit any hostilities against his Majesty's kingdoms," — which was unanimously agreed to. The government, so little prepared for defence as not to have in all England an army of more than 7000 men, and only a few invalids in Scotland, escaped present danger by the dreadful storm which dispersed the French squadron, and wrecked many of their transports. "FLAVIT DEUS ET DISSIPANTUR." But it was ascertained that while there was in the country a powerful, zealous, and active party for the Pretender, great indifference was manifested by almost all other classes. "I apprehend," said old Horace Walpole, "that the people may perhaps look on and cry, *Fight, dog, Fight, bear!* if they do no worse."

1743–44. Apathy in the public mind.

Lord Hardwicke, much alarmed by the aspect of affairs, had recourse to an expedient which I cannot think a very

New law of treason.

* As this is probably the last time I shall have to mention Walpole, whom I have had occasion to introduce from time to time ever since the impeachment of Lord Somers, I may be allowed to observe, that after much unjust abuse heaped upon him, there seems now to be a great disposition to bestow upon him unqualified praise. He was probably the most dexterous party-leader we have ever had,—equally skilled to win royal favour, to govern the House of Commons, and to influence or be influenced by public opinion. He likewise well understood the *material* interests of the country, and, as far as was consistent with his own retention of power, he was desirous of pursuing them. But that he might run no personal risk, he would make no attempt to improve our institutions; he was regardless of distant dangers; he plunged into a war which he admitted to be unjust and impolitic, — and by his utter neglect of literature and literary men, in spite of the example set him by his immediate predecessors, Whig and Tory, he gave to official life in England that aristocratic feeling, and vulgar business-like tone which it has ever since retained.

Character of Walpole as a minister.

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wise one; — he resolved to render more stringent the laws against high treason—instead of trying, by reforms, to make the government more popular. Accordingly he caused a bill to be introduced in the House of Commons to attaint the sons of the Pretender, if they should land, or attempt to land in Great Britain or Ireland; and when the bill came up to the Lords, he added clauses to make it high treason to correspond with the sons of the Pretender, and to postpone till their death the mitigation of the English law of treason, agreed to on the Union with Scotland, by which, after the death of the Pretender, corruption of blood in all cases of treason was to be done away with, so that innocent children might not be punished for the crime of their parents.

Opposed by the Duke of Bedford.

These clauses were most strenuously opposed, particularly by John Duke of Bedford, who made a very fine speech against them, in which he alluded, with much pathos, to the fate of his grandfather, Lord Russell; and observed, that if it had not been for the circumstance of his great-grandfather still surviving at that time, all the property of his family would have been confiscated, and his name would have been extinct. Lord Hardwicke, in answer, delivered an elaborate speech, which, however, was a mere repetition of a very ingenious pamphlet lately written by his son, the Honourable Charles Yorke, entitled, "Considerations on the Law of Treason." * His most difficult point was to reconcile the postponement of the stipulated mitigation to the compact entered into with Scotland, whereby the English law of treason was admitted into that country, on an express condition which was to be now violated, and he was obliged to resort to such quibbles as, that "it was not then foreseen that the Pretender would have sons;" that "as he was in a green old age, and likely to live as long as them, the postponement

* I have myself known several instances of a pamphlet being converted into a speech. One of the most remarkable of these was in a debate on the Catholic question, when there appearing a great coincidence of sentiment and language between a speech delivered by Sir John Copley and a pamphlet recently published by the present Bishop of Exeter, — the old song was very happily quoted:

"Good Sirs, this brown jug that now foams with mild ale,
In which we now drink to sweet Nan of the vale,
Was once Toby Philpotts."

was inconsiderable;" and that, "if they had sons a further postponement would be unnecessary, as, in a few years, the title of the reigning family would be universally recognised."* The Chancellor had large majorities, but I doubt whether he added to the security of the existing government by any of his enactments. The general feeling upon the subject was expressed by the oft repeated exclamation, CHAP. CXXXIV. Impolicy of the new law.

"See, Hardwicke's quibbles voted into law!" †

Cameron, of Lochiel, cared little for acts of parliament, when he said, "I will share the fate of my Prince whatever it be, and so shall every man over whom nature or fortune has given me any power!" The dread of attainder had no influence on the movements of Charles Edward, and if he had been captured he must have been treated as a prisoner of war, for the voice of the whole world would have been raised against the meditated deed of executing him as a traitor. And the very fact of James III., being then a healthy man, little turned of fifty, showed that, by the proposed violation of the compact respecting the law of treason, odium was wantonly brought upon the reigning dynasty.

During the session of parliament, which began on the 24th of November, 1744, and was closed on the 2d of May, 1745, there was the lull before the tempest; no business of any importance seems to have been transacted, and there has not been handed down to us the fragment of any debate in the House of Lords from the opening of it till the prorogation.‡ The King, as usual, then went abroad, and Lord Hardwicke, as a Lord Justice, was left at the head of the regency.

In a most difficult situation was he placed. First came the May 11. 1745.

* 13 Parl. Hist. 704—854.

† "What help from Jekyll's opiates canst thou draw?
Or Hardwicke's quibbles voted into law?"
*Pope's Fragment*, 1740.

‡ It is a curious fact, that towards the middle of the last century, the public interest in parliamentary proceedings, instead of increasing, seems almost entirely to have died away; for the prohibition against publishing debates would have had little effect if there had been any demand for them. Of the laborious and useful compilation, entitled "The Parliamentary History," there is only one volume between 1743 and 1747; one between 1747 and 1753; and one between 1753 and 1765. After Dr. Johnson ceased to report for the "Gentleman's Magazine," it contains few debates worth reading; and the "London Magazine," which rivalled it, falls off in the same proportion.

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Breaking out of the Rebellion.

news of the battle of Fontenoy, which not being connected with his administration of the government, and bringing no disgrace on the national character, though unfortunate, did not probably give him much concern: but in the course of a few weeks he was thrown into deep consternation by hearing of the landing of Prince Charles Edward in the Highlands of Scotland, — of his erecting the royal standard in Glenfinnan, with the motto TANDEM TRIUMPHANS, — of the gathering of the Highland clans around him, — of his march to Edinburgh, — of his enthusiastic reception in that metropolis, — of his festivals in Holyrood House, — of his victory over Cope at Prestonpans,—of the flight of the English troops to Berwick, —and of the preparations of the rebel army to cross the border. No blame was to be imputed to the Lords of the regency. A requisition was sent to the Dutch for the six thousand auxiliaries they were bound by treaty to furnish in case of invasion; several regiments were recalled from Flanders; the militia of the northern counties was called out; Marshall Wade was directed to collect at Newcastle all the troops of every sort that could be mustered; and all suspected persons were taken up and confined in prison by virtue of a suspension of the *Habeas Corpus* act. But there was an entire apathy in the public mind, and the "fight-dog—fight-bear" prophecy seemed about to be fulfilled. Thus writes a colleague of Lord Hardwicke well affected to the government, and not of a desponding turn of mind. "England, Wade says, and I believe, is for the first comer; and if you can tell whether the six thousand Dutch, and ten battalions of English, or five thousand French or Spaniards will be here first, you know our fate." * "The French are not come, God be thanked! But had five thousand landed in any part of this island a week ago, I verily believe the entire conquest of it would not have cost them a battle." †

King's return from abroad.

The King returned in a hurry from Hanover, on the 31st of August, but although thereby Lord Hardwicke's personal responsibility was relieved, his anxiety was rather increased; for his Majesty could not be made aware of his danger, and it was considered contrary to court etiquette to

His indifference.

* Henry Fox to Sir C. H. Williams. † Same to same.

say that the Stuarts had any adherents. "Lord Granville and his faction," says Horace Walpole, "persist in persuading the King that it is an affair of no consequence; and for the Duke of Newcastle, he is glad when the rebels make any progress, in order to confute Lord Granville's assertions. His Majesty uses his ministers as ill as possible, and discourages every body that would risk their lives and fortunes with him." * Lord Hardwicke, at the request of the cabinet, and in the name of the whole of them, presented a strong remonstrance to his Majesty on his want of confidence in his servants, but it was heard with silence and disgust. Their object now was, by language of kindness, and by measures of conciliation, to rouse some spirit in defence of the present establishment, and to try to impress upon the public mind a sense of the benefits obtained, and the evils avoided, by calling in the family which the nation, in their folly, appeared desirous of seeing ejected.

King's speech, written by Lord Hardwicke.

Parliament met on the 18th of October, when the King was persuaded to deliver a well-conceived speech, written by the Chancellor, containing the following stirring appeal: — "I have throughout the whole course of my reign made the laws of the land the rule of my government, and the preservation of the constitution in church and state, and the rights of my people, the main end and aim of all my actions: it is, therefore, the more astonishing that any of my Protestant subjects who have known and enjoyed the benefits resulting from thence, and have heard of the imminent dangers these kingdoms were wonderfully delivered from by the happy Revolution, should, by any arts and management, be deluded into measures that must at once destroy their religion and liberties, introduce Popery and arbitrary power, and subject them to a foreign yoke. I am confident you will act like men who consider that every thing dear and valuable to them is attacked, and I question not, but, by the blessing of God, we shall in a short time see this rebellion end, not only in restoring the tranquillity of my government, but in procuring greater strength to that excellent constitution which it was designed to subvert. The maxims of this

* To Sir H. Mann, 20th September, 1745.

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constitution shall ever be the rules of my conduct. The interest of me and my people is always the same, and inseparable. In this common interest let us unite, and all those who shall heartily and vigorously exert themselves in this just and national cause, may always depend upon my protection and favour."* His Majesty's gracious speech was generally circulated throughout the nation, while lower, and perhaps more effectual arts were used to rouse the people to the belief that they had an interest in the quarrel. Thus the butchers were specially apostrophised — on the ground that Papists abstain from eating meat in Lent, — and hand-bills were hawked through the streets, representing that the tartaned highlanders not only violated virgins, but ate young children for supper. A little reflection only was wanting to convince all reasoning men that they ought to stand by the present establishment. Setting aside the doctrine of indefeasible hereditary right, which had now few adherents in England, there was, unquestionably, a better prospect of constitutional and wise government under the House of Hanover, than under the recalled Stuarts. The two Georges, though not destitute of some respectable qualities, certainly were not very interesting or amiable characters; their utter contempt for literature and the arts placed them disagreeably in contrast with the two Charles's†, and some ground existed for the charge that substantial British interests had been sacrificed to the object of procuring petty additions to the Electorate. But upon the

State of the public mind.

* 13 Parl. Hist. 1311. In the Earl of Marchmont's Diary, under date October 7. 1745, it is said that "the Chancellor, starting as from a lethargy, remarked, that he had thought lightly of the highlands, but now saw they made a third of the island in the map." It is very possible that he might have made this geographical observation; but there is no pretence for saying that he had been blind to the danger which now threatened the government. On the contrary, he had long observed and lamented the growing activity of the Jacobites, and the growing indifference of the rest of the nation; and from the landing of Prince Charles was an *alarmist* as well as Newcastle, of whom the characteristic story was invented, that "for a whole day he shut himself up, considering how he might best make terms with the Pretender."

† I have often been at a loss to understand how all the good songs, all the good tunes (with the exception of "the Campbell's are coming"), all the poetry, and all the wit, were on the side of the Jacobites. Is it to be accounted for by the apprehension, that the heads of the House of Brunswick would not endure to have their cause supported by the effusions of genius and taste?

whole, the change of dynasty had answered well. During the half century which had elapsed since the expulsion of James II.,—notwithstanding the blind rage of contending factions, there had been, with slight interruptions, profound tranquillity in the country; the nation had made rapid and steady progress in wealth and power, and Britons had enjoyed civil and religious liberty to a degree hitherto unknown in the world. What could be expected from a RESTORATION, pronounced by Mr. Fox to be "the worst of revolutions," and which, in this instance, must have been fatal to our free constitution, from the arbitrary principles on which it was to be defended! The objection was most forcible, that the family claiming the throne were of a different religion from the great majority of the people, and looking to their personal qualities, it could not be overlooked that the old Pretender, calling himself James III., was a narrow-minded bigot, while Prince Charles, notwithstanding his romantic adventures, and the attempts to exalt him into a hero, being, in reality, a very ill-educated and very silly young man, had shown a mixture of rashness and obstinacy which, combined with his hereditary notions of prerogative, rendered him wholly unfit to rule over a free people.

Success of the Rebels.

The King himself became apprehensive, when news arrived of the Rebels having crossed the border — having captured Carlisle — having been kindly welcomed at Manchester — and having advanced to Derby, within little more than 100 miles of the capital. Lord Hardwicke and the Duke of Newcastle were for the time in favour with him, and he heartily co-operated with them in marching the Guards to Finchley *, and taking the most vigorous measures for the public safety. But when the danger seemed to have passed away by Prince Charles' retreat †, his disaster at Clifton, and

* See Hogarth.

Q. what would have happened if the rebels had marched on from Derby to London?

† The most recent and the most able historian of those times, says, that "had Charles marched onwards from Derby, he would have gained the British throne" (3 Lord Mahon, 415.); but without a rising in his favour in England, his little army must have been extinguished at Finchley; the English Jacobites, who had been lavish of promises, faltered when it came to the push; and, after all, their numbers were not sufficient to have effected any thing without the general assistance of the squires and the clergy, who again began to have the same fear for

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Feb. 1746. Ministerial crisis.

the recapture of Carlisle, by the Duke of Cumberland, his Majesty's dislike of the Duke of Newcastle again broke out in the saying, that it *was hard he should have for his minister a man hardly fit to be a Chamberlain in a petty German court,* and he formed a new ministry under Lord Granville, which lasted exactly forty-eight hours. It was said when the crisis was over, that Lord Hardwicke was ready to have resigned with his colleagues; but he warily abstained from doing so, recollecting that it is easy for a minister to go out, and often very difficult to get back again.

April 29. 1746. Victory of Culloden.

A little temporary dismay, with mutual recriminations, arose from the news of the fight at Falkirk, but exultation and complacency were diffused by the victory of Culloden. Now Lord Hardwicke had the satisfaction of reading an address of congratulation unanimously voted by the Lords, in which he had dexterously introduced the following sentence, most soothing to the royal ear: — "It is with the greatest pleasure and admiration we behold in how eminent a manner this signal victory has been owing to the valour and conduct of his Royal Highness the Duke; if any thing could add to our joy on such an event it is to see a prince of your Majesty's blood, *formed by your example, and imitating your virtues,* the glorious instrument of it; and happy should we be in any opportunity of testifying the high sense we have of such illustrious merit." *

Trial of the rebel Lords.

Next followed the painful but necessary task of trying the rebel Lords. The victory of Culloden was followed by wanton severities on the vulgar, which justly gave its hero an appellation immortalised by Byron; but for the good order of society, the leaders of an attempt to subvert an established government must make it at the peril of their own lives, and they are bound to consider not only the justice of their cause,

A.D. 1746.

but the probabilities of success or failure. Against the Earls of Kilmarnock and Cromarty, and Lord Balmerino, bills of

the Protestant religion, by which they were actuated in 1688. The general apathy arose a good deal from too great a contempt of the danger. If Charles had advanced to take London, his attempt would have more resembled Louis Bonapartes's attack on Boulogne than Napoleon's triumphal entrance into Paris from Elba.

* 13 Parl. Hist. 1405.

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indictment were found by a grand jury for the part they had taken in the siege of Carlisle; and these being removed by certiorari before the House of Lords, the trials were ordered to take place in Westminster Hall. Lord Hardwicke was appointed Lord High Steward.

On this occasion he is bitterly censured by Horace Walpole, who says, "though a most comely personage with a fine voice, his behaviour was mean, curiously searching for occasion to bow to the prime minister, that is no peer; and not even ready at the ceremonial. To the prisoners he was peevish; and instead of keeping up to the humane dignity of the law of England, whose character it is to point out favour to the criminal, he crossed them, and almost scolded at any offer they made towards defence." * . . . . . "He lost the character for humanity he had before tried to establish, when he sat as Lord High Steward at the trials of the Scotch Lords, the meanness of his birth breaking out in insolent acrimony." † This censure is greatly over charged, but I cannot defend the propriety and good taste of all his Grace's observations to the noble prisoners, and he forgot that although their attempt not having prospered, it was called *treason*, and the law required that they should be sentenced to death; they were not guilty of any moral offence, and that if they had succeeded in placing Charles Edward on the throne of his grandfather, they would have been celebrated for their loyalty in all future ages.

Lord Hardwicke's address to them.

When they had been marched to the bar, the gentleman gaoler standing by their side, holding the axe the edge still turned from them, he addressed a preliminary speech to them, which thus began:—"William, Earl of Kilmarnock,

* *Letter to Sir H. Mann.*—He afterwards goes on to tell the following amusing anecdote of Lord Mansfield, which is a gross misrepresentation, as Mr. Solicitor's conduct to all the prisoners during the trial was most courteous. "While the Lords were withdrawn, the Solicitor General Murray (brother of the Pretender's minister), officiously and insolently went up to Lord Balmerino, and asked him how he could give the Lords so much trouble. Balmerino asked the bystanders who this person was? and being told, he said, "Oh, Mr. Murray, I am extremely glad to see you; I have been with several of your relations; the good lady, your mother, was of great use to us at Perth."

† Memoirs of ten last years of George II.

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George, Earl of Cromarty, Arthur, Lord Balmerino, your Lordships are brought before the most august judicature in this kingdom, in order to receive your several trials upon different charges of high treason. As the crimes whereof you stand accused are of the most heinous nature, so the accusations against you are grounded on no slight foundations. But though your charge is thus weighty and solemn, it is but a charge, and open to all such defences as the circumstances of your several cases and the rules of law and justice will admit. The law is the solid basis and support of the King's throne: it is the great bulwark of the property, the liberty, and life of every subject, and it is the security of the privileges and honours of the Peerage. By this measure, which is uniform and equal to every member of the community, your actions which are now called in question are this day to be examined and judged. If your Lordships are innocent this will be one ground of a reasonable confidence in your present unhappy circumstances. But to this consideration your own thoughts cannot fail to add another; I mean that the rules of this law are to be expounded and disclosed to you by this illustrious assembly, the whole body of the Peers of Great Britain, in whose noble and discerning minds nothing can have weight but evidence and justice. Guilt alone can endanger you, and innocence alone can acquit you." He then sarcastically told them of their felicity in being tried under the law made to regulate the trial of high treason since the Revolution. "However injuriously that Revolution has been traduced," said he,—"whatever attempts have been made to subvert this happy establishment founded upon it, your Lordships will now have the benefit of that law in its full extent."

Lords Kilmarnock and Cromarty pleaded *guilty*, but Lord Balmerino pleaded *not guilty*—only, however, to show the stoutness of his heart and that he might glory in what he had done, for he had been taken with arms in his hands, and he attempted no legal defence beyond objecting that he was improperly described in the indictment as being "late of Carlisle," and that on the particular day laid in the indictment on which he was charged with assaulting that city, he

was more than twenty miles off; but the Lord High Steward told him that his description was an immaterial form, and that according to English procedure the overt act of treason might be alleged on one day, and proved on another.* Of course he was unanimously found guilty, — a verdict which he heard undismayed, being resolved on the scaffold, in response to the prayer — "God bless King George," to say "God bless King James!"†

Sentence passed by Lord Hardwicke.

The Lord High Steward now proceeded to pronounce sentence on all the three: "By this conviction it is now finally determined that your Lordships are guilty of that crime which not only the laws of Great Britain but of all other countries, for the wisest reasons, adjudge to be the highest. As it gives the deepest concern to every one of my Lords, your peers, to find persons of your birth and quality stained with so foul an offence, so it must give them some satisfaction that all of you, in effect, have confessed it. Charity makes one hope that this is an indication of some disposition to that repentance which your guilt so loudly calls for. To attempt to aggravate crimes of so deep a dye, and in themselves so incapable of aggravation, against persons in your unhappy circumstances, would be a vain as well as a most disagreeable task. And yet the duty of that place in which I have the honour to sit requires that I should offer some things to your consideration, to explain more fully the necessity of that justice which is this day to be administered, and to awaken in your minds a due sense of your own condition." Having then, at most unjustifiable length, given a partial view of the campaign, and of the motives and objects of the opposite sides, he thus concludes: "If from any unforeseen accidents, not uncommon in military operations, delusive hopes were for some time kept alive, it seems to

* The last Duke of Queensbury (old Q.), whom I knew on my first coming to London, used to complain of the shameful manner in which he had once been used by losing a great cause, simply for not doing what those who required it knew to be impossible. "When the trial was nearly over," said he, "proclamation was made that I, who was the plaintiff, should come forth; and because I did not come forth, I was nonsuited and cast, although Judge, jury, and counsel, all were well aware that I was not then attending the Kingston Assizes, but was shooting grouse in the highlands of Scotland."

† From him Walter Scott has taken the exit of Fergus MacIvor.

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have been judicially designed by Providence to render the more signal that vengeance which was reserved for them at the battle of Culloden. How much was owing, on that memorable day, to the bravery and discipline of his Majesty's troops, to the animating example, the intrepid valour, and the wise conduct of a Prince descended from him who is so deeply engraven on the heart of every member of this great assembly, that I could only repeat what their own grateful minds have already suggested to themselves, and represented to the throne. Then was experienced how much that courage which virtue, true loyalty, and the love of our country inspire, is superior to the rashness and false fire of rebellion, accompanied by the terrors of guilt. I will add no more. It has been his Majesty's justice to bring your Lordships to a legal trial; and it has been his wisdom to show that, as a small part of his national forces was sufficient to subdue the rebel army in the field, so the ordinary course of his laws is strong enough to bring even their chiefs to justice. What remains for me is a very painful, though a necessary, part. It is to pronounce that sentence which the law has appointed for crimes of this magnitude; a sentence full of horror! such as the wisdom of our ancestors has ordained as one guard about the sacred person of the King, and as a fence about this excellent constitution, to be a terror to evil doers, and a security to them that do well. The judgment of the law is, and this High Court doth award, ——" and so he went through the drawing, hanging, cutting down alive, burning their bowels before their faces, and the other particulars which he had eulogised as necessary for the protection of the King and constitution.* Cromarty was pardoned, out of compassion to his wife. The other two were beheaded, the rest of their sentence being remitted.

Without imputing blame in this instance to the government, their tragical end excited much commiseration: —

> "Pitied by gentle minds, Kilmarnock died,
> The brave, Balmerino, were on thy side."

* 18 St. Tr. 442—530.

The next victim, notwithstanding the courage he displayed, fell unlamented:—

Lord Lovat.

"But Lovat's fate indifferently we view,
True to no King, to no religion true;
No Tory pities, thinking what he was,
No Whig compassions, for he left the cause.
The brave regret not, for he was not brave,
The honest mourn not, knowing him a knave."

March, 1747.

As he had committed no overt act of treason in England, to bring his case before the House of Lords, it was necessary to proceed against him by impeachment. Articles being presented at the bar, the Chancellor was again appointed Lord High Steward, and the trial took place in Westminster Hall.

Lord Hardwicke's preliminary address to him.

Lord Hardwicke on this occasion cannot be accused of any departure from the rules of law or justice; but he was too solicitous to praise the existing government, and he betrayed, under assumed moderation of tone, great internal exultation at finding such a victim in his power. All parties knowing that there was the certainty of a conviction on the clearest evidence, in his preliminary address to the prisoner when placed at the bar, he said, "The weight of this accusation, the solemn manner of exhibiting and prosecuting it, and the awfulness of this supreme judicature, the most illustrious in the world, are circumstances that may naturally strike your mind with anxious and alarming apprehensions. Reasonable and well-grounded must those apprehensions be if they proceed from that greatest of all terrors, a consciousness of guilt. But if your Lordship is innocent, if you have really preserved yourself untainted with the heinous crimes laid to your charge, these very awful circumstances, when duly considered, ought to have a contrary effect, and to afford you support and consolation."—After the verdict of guilty came a speech of culpable length and virulence; for the punishment provided by the law in cases of high treason did not include torturing and mangling while still alive by the Judge as well as by the hangman. After describing how Lord Lovat had forced out his clan to fight for the Pretender, he thus introduced a dissertation on clanship, much fitter for a debate in the House when sitting as a legislative assembly:

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Unjustifiable length of the speech in pronouncing sentence.

"Permit me to stop here a little and lament the condition of part of this united kingdom; happily united in interests, both civil and religious; happily united under the same gracious monarch and the same public policy. Yet the common people, in some of the remote northern counties, are kept in a state of bondage to certain of their fellow subjects, who, contrary to all law and every true principle of government, have erected themselves into petty tyrants over them, and arrogate to themselves the right of compelling them into rebellion against their lawful sovereign, under the peril of fire and sword. Astonishing it is that such a remain of barbarism should have subsisted so long in any quarter of this civilised well-governed island. But let it be accounted one good fruit of this inquiry, that it has been so clearly made manifest. Such a knowledge of the disease points out the remedy. This usurped power was audaciously made use of over your clan. It is true your Lordship's activity in exercising it rose and fell in proportion to the appearance of the good or bad success of the Pretender's cause; but after the advantage gained by the rebels at Preston Pans, which you vainly called *a victory not to be paralleled in history*, you thought it right to throw off the mask, and openly to espouse a party which you then hoped might be espoused with impunity." After a history of the rebellion, and many other topics, political, economical, military, and religious, at last came the sentence, which, though frightful, it must have been a relief to hear. Lovat died bravely, exclaiming "*Dulce et decorum est pro patriâ mori;*" but his treachery and cruelty were so notorious, that a savage shout of exultation was raised when he laid his head on the block.

Scandalous execution of Charles Radcliffe on an old attainder.

About this time another execution took place, which was universally condemned, and which I think reflects great disgrace upon Lord Hardwicke. As the legal adviser of the Crown, he was chiefly answerable for it, although he did not ostensibly take any part in the proceeding. Charles Radcliffe, when quite a boy, had been engaged in the rebellion of 1715, and being attainted had escaped from Newgate. His elder brother, the Earl of Derwentwater, had then been beheaded, all the possessions of his family had been confiscated,

their blood had been corrupted, he had lost all the rights of citizenship in his native land, and he had chosen another country in which, for thirty years, he had lived quietly and respectably. During the insurrection in Scotland, having been captured on board a French vessel bound for that country, it was resolved that he should be arraigned on his original sentence, which had slumbered so long. The only trial now conceded to him was confined to his identity, and although there was no doubt of the fact, I do not think that it was satisfactorily established by legal evidence.* For such a course there was no precedent, except in the case of Sir Walter Raleigh, which had brought shame upon the reign of James I. The constancy of this unfortunate gentleman to his cause, and the calmness of his demeanour, powerfully excited the public sympathy in his favour:

> "Radcliffe, unhappy in his crimes of youth,
> Steady in what he still mistook for truth;
> Beheld his death, so decently unmoved,
> The *soft* lamented, and the *brave* approved."

The general opinion was and is, that there was at this time greater and less necessary severity than on the suppression of the rebellion of 1715†, and although the blame of it is laid upon the Duke of Cumberland, who personally ordered the military executions which rendered his name so odious in Scotland, Lord Hardwicke ought to be held responsible for what was done judicially in England.‡

Excellent measure of Lord Hard-

However, I am glad to be able again to praise him, in stating his admirable measure for abolishing heritable juris-

* 18 St. Tr. 430—442.

† Hall. Const. Hist. iii. 312.

‡ The subsequent execution of Dr. Alexander Cameron in 1753, I regard as a wanton atrocity. He was a man of literature and science, who, having studied surgery, had accompanied his brother, the famous Lochiel, into the field in 1745, that he might take care of him when wounded; and had escaped with Prince Charles after the battle of Culloden. His name was included in the act of attainder, and he was appointed surgeon to a regiment in the French service. Some years after, in a time of profound tranquillity, when all real danger of Jacobitism had passed away, he visited his native country to arrange his private affairs; and being betrayed, he was sent to London, arraigned on the act of attainder, and without trial, executed as a traitor at Tyburn; displaying the highest qualities of a philosopher and a Christian. Although Lord Hardwicke's name is not mentioned in this affair, he must have been consulted about it; and he must have been present in council when the death warrant was signed.— See 19 St. Tr. 733—746.

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as that some records were damaged, and others were locked up with the Scottish regalia, they pretended that they could not prepare the draught of the required bill, nor give an accurate account of the nature and extent of the heritable jurisdictions; and they remonstrated against the abolition of these jurisdictions as a measure contrary to the articles of Union, and wholly impracticable.*

Feb. 17. 1747. His speech in defence of it.

Lord Hardwicke, nothing daunted, caused a bill to meet his object to be prepared under his own superintendence in London, and this he introduced at the commencement of the following session in a most lucid and argumentative speech, of which we have an authentic report edited by himself. In this he animadverts with decency, but with the most cutting severity, on the conduct of the Scotch Judges, saying, amongst other things equally bitter, "the interference of the legislature is now proved to be indispensable, for after the discovery made by the Lords of Session to all the world, that there is no record by which the nature and extent of these heritable jurisdictions can be ascertained, they may be claimed and stretched by all who think fit, and the poor people who are oppressed are told by those to whom they might fly for refuge that there is no redress for oppression in its worst form." His chief difficulty was to combat the argument arising from the treaty of Union. After some rather sophistical criticisms upon the language of the different articles, he assumes a manly tone, and boldly contends that the parliament of the United Kingdom had in it all the powers which belonged to the parliament of Scotland, and could now legislate on the subject as that parliament might have done,—insisting, that if the measure was clearly required by existing circumstances, and must be for the general good of Scotland, it ought to be adopted were it forbidden by the articles of Union in terms the most express and peremptory. He showed that an attempt to fetter the supreme legislative power in any state is a contradiction in terms. "In all

Power of parliament over the articles of Union.

* It was soon after this that a Lord of Session spoke so contemptuously of Cromwell's Judges, who he could not deny had administered justice impartially and satisfactorily, but whom he deprived of all merit from being free of local and party connections, saying, "No thanks to them, KITHLESS LOONS!"

countries," he said, "the legislative power must, to a general intent, be absolute; and therefore, upon treaties of this nature, strict and rigid constructions ought not to be made, and may prove dangerous. If they should too easily be given way to, incorporating Unions would become impracticable or mischievous.* Out of policy, I presume, but not very sincerely, he declared that he was not moved to bring forward this measure by the rebellion, or by the supposed disaffection of Scotland, or by a belief that the present possessors of these heritable jurisdictions were not fit to be intrusted with such powers, there being before his eyes Scottish chiefs of distinguished loyalty, as well as high birth, worthy to be trusted with any powers which it is proper for the crown to confer upon a subject. "My Lords," said he, "my true reasons are drawn from known and allowed maxims of policy. I think that the parcelling out in this manner the power of jurisdiction originally lodged in the Crown, was an erroneous and a dangerous model of government. I look upon the administration of justice as the principal and essential part of all government. The people know and judge of it by little else. The effects of this are felt every day by the meanest in the business and affairs of common life. Statesmen look abroad into foreign countries, and consider our remote interests and connections with other nations. But of what utility are those views, however great and just, unless they be referred back to our domestic peace and good order? The chief object of the social compact is to secure to us the regular course of

* This, however, is perhaps, by a fallacy, begging the question. There may be a legislature with limited powers, like the American Congress,—and it is possible that after an incorporating union the power of the united legislature may be made to be limited by the conditions of the treaty of union declaring that any law to infringe these conditions is void, and by erecting a tribunal like the Supreme Court of the United States to decide whether any law is contrary to these conditions—or, in a rougher manner, by providing that an infraction of these conditions shall work a dissolution of the union. However, I entertain no doubt that by the just construction of the treaty of Union with Scotland, and of the treaty of Union with Ireland, the united legislature was to be vested with supreme and absolute power over the whole empire. The fact that a proposed law repeals or alters any article of the Union is a very strong but not a conclusive objection to it. On this doctrine I acted when I supported the entire abolition of the Court of Admiralty, and the substantial abolition of the Court of Exchequer in Scotland, both declared by the articles of Union to be for ever established in that country; and by this doctrine I should be guided if any law were proposed for modifying the Protestant Episcopal Church in Ireland.

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law and justice. When the King, therefore, grants away jurisdiction, he parts with so much of his government; it is giving away so many jewels of his Crown. It is certainly putting so much of the protection of his people into other hands; and this tends directly to dissolve the bond of allegiance and affection between King and people; whilst the subjects do not see the King either in the benefits they enjoy, or the punishments they undergo. Hence arises a dangerous and unconstitutional dependence. The people will follow those who have the power to help or to hurt them; and this dependence will operate most strongly in the uncivilised part of any country remote from the seat of government. The ill effects of it in Scotland were felt long since, and will continue to be felt till the appropiate remedy is applied." He then stated the details of the measure, by which the whole of the heritable jurisdictions in Scotland were at once to be swept away, root and branch, and the King's judges were to make circuits twice a year for the trial of all offenders.

Lord Hardwicke concluded by laying his bill upon the table, and moving that it be read a first time; but as compensation was to be given, he stated on a subsequent day that it must commence in the House of Commons. There it was brought in by the Attorney General, Sir Dudly Ryder, and passed with little opposition. When it came up to the Lords it was strongly opposed by the Duke of Beaufort, and other Jacobitically inclined Peers, but the Chancellor left the defence of it to the Duke of Argyle, without again entering into its merits. The opponents of the bill did not venture to divide the House upon it, and satisfied themselves with a violent protest. * It certainly does high honour to its author. From the time that it came into full operation, and not from the Union, commences the prosperity of Scotland, which having been the idlest, poorest, and most turbulent country in Europe, has become one of the most industrious, the most improving, and the most orderly.

Lord Hardwicke's "Coercion Bill."

But such is the imperfection of human wisdom, such a mixture of praise and censure is meted out to the most clear-

* 14 Parl. Hist. 1—57.

seeing legislators, that I am obliged immediately to record another Scottish measure of Lord Hardwicke, which greatly endangered and considerably retarded the good effects of that which I have so cordially applauded. Provision being made for the due administration of justice, conciliation was now the obvious policy to reclaim the Highlands; but because a deep resentment was manifested against the barbarities of the Duke of Cumberland, and there were enthusiastic rejoicings at the escape of the young Chevalier, after all the perils to which he had been exposed, and because there had been a not unnatural combination to oppose the abolition of the heritable jurisdictions between the Lords to be restrained, and the vassals to be protected by it, who all cried out with equal violence that it was an encroachment on the ancient rights and privileges of Scotsmen,—Lord Hardwicke, instead of affording a little time for those feelings to subside, in the ensuing session introduced a "Coercion Bill," which added insult to injury, for it not only contained clauses for universally disarming the highlanders, but forbidding them to use the *tartan*, which they said and believed had distinguished their ancestors since the time of Ossian and long before. Instead of plaids and philibegs, and trews, they were, henceforth, to be clothed in coats and in waistcoats, and (worst of all) in BREECHES!!! This unpopular bill was strongly opposed in both houses, but was carried by large majorities, for there was then a strong prejudice against the highlanders. People had not forgotten the alarm and consternation into which a small band of them had thrown all England; most unfounded stories were propagated respecting atrocities imputed to them in their march to Derby, and it was highly popular in the South by acts of parliament to heap upon them all sorts of indignity. Unfortunately the debates upon the bill are lost, except respecting one insignificant clause about preventing priests from officiating in Scotland who were ordained by nonjuring Bishops. This the English Bishops assailed as an attack on the spiritual jurisdiction of Christ's church, and they rejected it in the committee *, but on the report, Lord

May, 1748. Highland garb to be abolished.

* 32, including 20 Bishops, against 29 lay Lords.

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Hardwicke made a strong speech in its favour. In reference to Charles's landing at Moidart, he said, "Rebellion may take its rise in one of the remotest, — one of the smallest and least populous corners of this island: —

> 'Mobilitate viget, viresque acquirit eundo:
> Parva metu primo; mox sese attollit in auras,
> . . . . et magnas territat urbes.'

I am astonished, my Lords, to hear any regulation called *cruelty* that may tend towards preventing such a rebellion for the future. What is the form of ordination among those who call themselves nonjuring bishops, or what confessions, promises, or vows, they exact from the persons they ordain, I do not certainly know; but I believe that no man will be ordained by one of them who is not a Jacobite in his heart; and an exclusion of all such from the exercise of their function in any part of his Majesty's dominions is, I think, absolutely necessary for the public safety. As to the encroachment made by this clause upon the rights or privileges of the Christian church, I do not pretend to be so good a judge as the Right Reverend Prelates; but, as far as I am master of the subject, I cannot conceive what the rights and privileges of the Christian church have to do in this question. We do not by this clause pretend to annul the holy orders granted by a nonjuring bishop, nor do we pretend that the civil magistrate has any power to determine whether a priest has been regularly ordained, or a bishop duly consecrated; but, surely, the supreme legislature in every state has power to determine who shall be allowed to exercise the office of priest or bishop within its territory." The clause was restored.*

To the enactments for the universal seizure of arms, the most captivating objection was, that they made no distinction between Jacobites and Georgites. The loyal clans murmured "that, after having defended the King upon the throne, they were forbidden for the future to defend themselves, and that the sword was forfeited which had been legally employed." I believe such measures are powerless to

* 37 to 32.

put down disaffection, and rather excite irritation than cripple the means of annoying the established government. The Highlanders were first reconciled to the House of Hanover by the great Lord Chatham, who pursued towards them a policy very different from that of Lord Hardwicke's "Coercion Bill," for he put arms into their hands, and called upon them, with confidence, to fight against the enemies of their country.* It is amusing to find Dr. Johnson ascribing the tranquillity he observed in the Highlands, in the year 1773, to an act which, having prolonged agitation for a while, had soon become a dead letter, — the very memory of it having been blotted out by a more generous and wiser policy. "The last law," says he, "by which the Highlanders are deprived of their arms, has operated with efficacy beyond expectation." His remarks are more amusing, and therefore more valuable, on the clauses respecting the Highland garb. "In the Islands the plaid is rarely worn. The law by which the Highlanders have been obliged to change the form of their dress has, in all the places that we have visited, been universally obeyed. I have seen only one gentleman completely clothed in the ancient habit, and by him it was worn only occasionally and wantonly. The common people do not think themselves under any legal necessity of having coats; for they say that the law against plaids was made by Lord Chancellor Hardwicke, and was in force only for his life; but the same poverty that made it then difficult for them to change their clothing hinders them now from changing it again." Instead of breaking the spirit of the clans, this tyrannical law only helped to keep up clannish distinctions and customs. In Lord Hardwicke's lifetime it was evaded by Highlandmen carrying a pair of breeches, suspended by a stick, over their shoulders; for the Highlanders wearing a short petticoat like the Romans,

Effect of this bill.

* "I remember how I employed the very rebels in the service and defence of their country. They were reclaimed by this means: they fought our battles; they cheerfully bled in defence of those liberties which they had attempted to overthrow but a few years before." — *Lord Chatham's Speech in the House of Lords*, 2d Dec. 1777.

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—thought, like the Romans, with contempt of all to whom the line of Ovid might be applied,—

——"laxis arcent mala frigora *braccis*." *

Jacobitism was not completely extinguished in the Highlands till Lord Hardwicke's obnoxious act was repealed on the motion of the late Duke of Montrose, who showed himself a wiser man than the Chancellor, and who, for his patriotism, was thus celebrated in the Rolliad:

"Thee, Graham! thee the frozen chieftains bless,
Who feel thy bounties through their fav'rite dress;
By thee they view their rescued country clad
In the bleak honours of their long-lost plaid;
Thy patriot zeal has bar'd their parts behind
To the keen whistlings of the wintry wind.
While lairds the dirk, while lasses bagpipes prize,
And oatmeal cake the want of bread supplies;
The scurvy skin white scaly scabs enrich,
While contact gives and brimstone cures the itch;
Each breeze that blows upon these brawny parts
Shall wake thy lov'd remembrance in their hearts;
And while they freshen from the northern blast,
So long thy honour, name, and praise shall last."

A.D. 1748. Quiet times after the Rebellion.

Lord Hardwicke, after these exertions, talked so much of his fatigue and desire of ease, as actually to create a belief among those who did not know him well, that he was going to give up his office for one less laborious: "We talk much," writes Horace Walpole to his correspondent at Florence, "of the Chancellor resigning the Seals, from weariness of the fatigue,—and being made President of the Council—with other consequent changes; but as this has already been a discourse of six months, I don't give it you for certain."† Had the Chancellor been suddenly required to resign, he would have felt like the old man when Death actually appeared to him to relieve him of his burthen.

For several succeeding years his political career becomes obscure, partly from the quietness of the times, and partly from the growing deficiency of our parliamentary records. The treaty of Aix-la-Chapelle excited no discussion in the

* Trist. v. 7. Pronouncing the *c* before *i*, as the Italians do, and the Romans probably did, it is wonderful with how little change of sound this word has descended to us from our Scythian ancestors.—See Luc. i. 430.

† Letter to Sir H. Mann, 2d Dec. 1748.

Lords, and, notwithstanding the machinations of the Prince of Wales and his party, the Chancellor, sitting on the woolsack, seems to have enjoyed nearly a sinecure. Mr. Pelham, with his unostentatious virtues, enjoyed the confidence both of the Sovereign and of the people, and, while he lived, faction was stilled almost into silence. The Chancellor in those halcyon days only came forward on occasions of ceremony, such as the choice of a Speaker, and, to keep his name before the public, he then tried to say something smart, which he would not have thought of had he been to take part in a debate on which the fate of the ministry might depend.* Compliments to Speaker Onslow, and such common places, however prettily turned, have lost all their interest.†

Lord Hardwicke's speech on the Mutiny Bill.

The Mutiny Bill, which now passes as quietly as any road bill, still continued an annual occasion for patriots to declaim against a standing army. In 1749, the Lord Chancellor found it necessary to reply to them in a speech curious for the view it gives of the state of public feeling which prevailed while Prince Charles was advancing to Derby, and of the danger to which the government was then exposed. "When the late rebellion broke out, I believe most men were convinced that, if the rebels had succeeded, popery as well as slavery would have been the certain consequence; and yet what a faint resistance did the people make in any part of the kingdom?—so faint, that had we not been so lucky as to procure a number of regular troops from abroad time enough to oppose their approach, they might have got possession of our capital without any opposition, except from the few soldiers we had in London, and the fate of the kingdom would have depended upon a battle fought within a few miles of this city. Whilst the people therefore remain in their present unarmed and undisciplined condition, let the consequence be what it will, we must keep up a standing force, and no one ever heard of an army being long kept up in any country in the world without military laws and court-

* 14 Parl. Hist. 93.; 15 Parl. Hist. 328.

† About this time Lord Hardwicke was elected High Steward of the University of Cambridge, an honour which he held for his life, and which was long enjoyed by his posterity.

martials for holding the officers and soldiers to their duty. But these officers and soldiers are still our fellow-citizens, actuated by the same feelings with ourselves, and while they preserve internal quiet and defend us from foreign aggression, they would join us to preserve the constitution instead of combining against us to overturn it."* After a few patriotic sallies on the subversion of liberty by military violence, the bill was carried, and dulness again overspread the House—till a great excitement was produced by a melancholy event which changed the succession to the throne.

* 14 Parl. Hist. 451.

# CHAPTER CXXXV.

CONTINUATION OF THE LIFE OF LORD HARDWICKE TILL HE RESIGNED THE GREAT SEAL.

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March, 1751.

THE sudden death of Frederick, Prince of Wales, in the flower of his age, which was little regretted at Court, placed Lord Hardwicke in a situation of considerable embarrassment, but he extricated himself from it with his usual prudence. The present heir-apparent, afterwards George III., being no more than twelve years old, and George II. being sixty-seven, it was indispensably necessary that provision should be made for the exercise of the royal authority on a demise of the Crown. The King wished much that the Regent to be named should be his favourite son, the Duke of Cumberland, who was himself strongly of opinion that the distinction was due to his station as first Prince of the blood, and to his services as the victor of Culloden; but this Prince, notwithstanding some high qualities which belonged to him, was now so unpopular that when his brother's death was announced, the general cry was,—"*Oh! that it were the Butcher!*" and his appointment as Regent would only have been satisfactory to the Jacobites. Lord Hardwicke suggested to Pelham and the Duke of Newcastle, that preference should be given to the Dowager Princess of Wales, who had been obnoxious to the Court during her husband's life, but on his death had behaved with such great propriety that no personal objection could be started to her. The King reluctantly acquiesced, on the condition that she should be controlled by a Council of regency, of which the Duke should be president. The difficulty now was to announce the plan to His Royal Highness; and this task was devolved upon the Chancellor, who accordingly waited upon him, and in the most respectful manner showed him the heads of the proposed Regency Bill, enlarging on the weight which he would have in the council. Deeply disappointed at not

Regency Bill.

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grasping the whole royal power as Regent, he said sternly,—"Return my thanks to the King for the plan of the Regency. As to the part allotted to me, I shall submit because he commands it!" The bill passed both Houses with little difficulty, and Lord Hardwicke still preserved his ascendency.

A.D. 1751. Lord Hardwicke supports the bill for the reformation of the Calendar.

This year he deserves the credit, which I am sorry to say does not always belong to Chancellors, of supporting a useful measure proposed by a political opponent. Lord Chesterfield, dismissed from his offices, embraced every opportunity of annoying the government; but having brought forward, with the assistance of Lord Macclesfield, son of the Chancellor, his famous bill for the reformation of the Calendar, according to the Gregorian computation of time, by making the year commence, for all purposes, on the 1st of January, instead of the 25th of March, by suppressing in September, 1752, the eleven days the old style had fallen behind, so that the day following the 2d of that month should be called the 14th, and by inserting certain intercalary days in time to come.* During some preceding Chancellorships, I am afraid the noble and learned President of the assembly, disliking trouble and responsibility, — perhaps grudging a little credit to a rival,—perhaps meaning to bring in the same bill himself at a future time,—would have left the woolsack, and with faint compliments to the good intentions of the mover, would have pointed out the danger of innovation,— the disturbance of contracts which the change would occasion,—the height of prosperity and happiness which the nation had reached under the old computation of time,— and the degradation of copying the example of the French, our natural enemies, and the Pope, the foe of our holy reformed faith. Had Lord Hardwicke followed this course, he might easily have defeated the opposition leaders, and we might still have been adhering, like the Muscovites, to the old Calendar, exploded by all civilised nations. But he candidly supported the bill, and, with his countenance, it passed so easily that people were astonished the reformation had been so long delayed. †

* 24 Geo. 2. c. 23.

† 14 Parl. Hist. 979.; Lord Chesterfield's Letters to his Son; Dr. Matty's

Bill respecting the forfeited estates in Scotland.

In 1752, the only public measure in which Lord Hardwicke took an ostensible part, was a bill for annexing the forfeited estates in Scotland to the Crown, and encouraging Englishmen and lowland Scotsmen to settle upon them. This measure, in the result, operated favourably, by preserving the estates for the families of the individuals who had been attainted; but I cannot commend it, for it was meant as a measure of severity against them. Lord Hardwicke defended it on the ground that, if the estates were sold, they would be purchased at a low price for the former owners, and that there were fictitious charges upon them which would run away with the whole of the purchase-money — censuring, but in a manner not very mortifying to them, the whole Scottish nation, whom he seems to have considered "aliens in blood, language, and religion." The noble Duke, said he, "is so sanguine as to hope that all these fraudulent claims may be detected; but, from experience, I am inclined to entertain no such hopes. The people of that country are so faithful to one another, in every case in which they think their honour concerned, that no reward can tempt them, no terror can frighten them, to betray their trust: they will take any oath you can frame rather than discover what they think their honour obliges them to conceal, and this fidelity reaches even to the very lowest of the people. Their contempt of rewards is proved by the escape of the young Pretender, and their disregard of threats by the impunity of the murder of Captain Porteous." *

Lord Hardwicke's Jew Bill.

The year 1753 is memorable in the life of Lord Hardwicke by his JEW BILL and his MARRIAGE BILL, for both of which I think he deserves credit. From the fatuous fears and furious cries which the former occasioned, it has generally been represented as "a bill by its own vigour at once to confer all the rights of natural-born British subjects on all

Life of Lord Chesterfield. Had Lord Hardwicke been inclined to crush the measure, he had an ample pretext in the manner in which it was first received by the Duke of Newcastle, the ostensible head of the government in the House of Lords. Says Chesterfield: "His Grace was alarmed at so bold an undertaking, and entreated me not to stir matters that had been long quiet; adding, that he did not love new-fangled things."

* 14 St. Tr. 1237. 1248.

foreign Jews who might set foot on English ground;" whereas it merely allowed bills to be brought in for naturalizing Jews without their having taken the sacrament of the Lord's supper according to the rites of the Church of England, or, in other words, to allow that a Jew might be naturalized by act of parliament. After some sharp debates, the bill passed both Houses, and received the royal assent; but from there being then no reports of parliamentary proceedings printed, its nature was so grossly misrepresented that great odium was cast upon the Chancellor as its author; and the Bishop of Norwich, who voted for it, soon after, holding a confirmation, he was called upon by the mob "to administer the rite of circumcision," and a paper was affixed to the church doors, stating that "next day being Saturday, his Lordship would confirm the Jews, and on the day following, the Christians." Such was the ferment in the nation that ministers became alarmed—particularly as a general election was approaching,—and in a very dastardly manner they agreed to abandon this measure, which, if persisted in, might have introduced upon reflection a more liberal feeling into the public mind, and accelerated by a century the religious freedom which we now enjoy.*

Lord Hardwicke's Marriage Bill.

Lord Hardwicke's Marriage Act, with considerable modifications and improvements, remains in force, and regulates in England the most important of all contracts,—upon which civil society itself depends. Hitherto the old canon law had prevailed, according to which a valid marriage was constituted either by the mere consent of the parties, or by the presence of a priest in orders, at any time or place, without the sanction of parents or guardians, although one or both of the parties might be under age,—and without any registration or public act affording the means of knowing whether such a marriage had been contracted. This does seem to me a very

* 14 Parl. Hist. 1365—1442.; 15 Parl. Hist. 91—163. By way of apology, Lord Hardwicke said—"However much the people may be misled, yet in a free country I do not think an unpopular measure ought to be obstinately persisted in. We should treat the people as a skilful and humane physician would treat his patient; if they nauseate the salutary draught we have prescribed, we should think of some other remedy, or we should delay administering the prescription till time or change of circumstances has removed the nausea."

defective state of the law, although it exists in the northern part of the island, and is there defended by sensible men. It is of importance for the protection of minors that they should not be permitted to enter into this contract by their own mere fantasy, when they are wholly incapacitated to enter into others of the most trifling nature, and it is important to society in general, that a form—simple and notorious,—should be specified, which shall be essential, and which shall be sufficient, for constituting the contract, and the evidence of which shall be open to all mankind. Although we reject the Roman Catholic doctrine that marriage is a sacrament, it is highly desirable that a religious service should accompany the celebration of it, to create a deep sense of the solemnity of the obligation thereby contracted; but as some may object to such a service, and all should be permitted to marry, it ought not to be considered indispensable.

Defects in the old law of marriage.

Various striking instances of the inconveniences and hardships resulting from the then existing law had recently occurred. Young heirs and heiresses, scarcely grown out of infancy, had been inveigled into mercenary and disgraceful matches, and persons living together as husband and wife for many years, and become the parents of a numerous offspring, were pronounced to be in a state of concubinage, their children being bastardised, because the father had formerly entangled himself in some promise which amounted to a precontract, and rendered his subsequent marriage a nullity. In the public prisons—particularly in the Fleet—there were degraded and profligate parsons, for a small fee, ready to marry all persons at all hours there, or to go when sent for to perform the ceremony in taverns or in brothels. The public attention had been particularly drawn to the subject by a case of very flagrant oppression, which had appeared on the hearing of an appeal before the House of Lords, and the Judges were ordered to prepare a bill to remedy the evils complained of. Their bill did not please the Chancellor, who himself undertook the task with great earnestness. His own performance was not in a great taste. He declared null all marriages which were not celebrated by a priest in orders, either under banns or licence, declaring in the case of minors

Defects in the new measure.

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the licence void without the consent of parents or guardians — the banns to be for three successive Sundays in the parish church — and the granting of ordinary and special licences to be subject to certain regulations — the ceremony to be performed by a priest according to the liturgy of the Church of England. The first great blot upon the measure was, that it required Roman Catholics, Dissenters, and others who might have serious scruples of conscience against being married according to the prescribed service (the least felicitous in the English liturgy) to submit to it, — or debarred them from matrimony altogether. Another great defect was, that no provision was made by it respecting the marriage out of England of persons domiciled in England, so as to prevent the easy evasion of it by a trip to Gretna Green. The measure was likewise highly objectionable in making no provision for the marriage of illegitimate children — who had no parents recognised by law, and could only have guardians by an application to the Court of Chancery, — and in declaring marriages which were irregular by reason of unintentional mistakes in banns or licences absolutely void, although the parties might live long together as man and wife, having a numerous issue considered legitimate until the discovery of the irregularity.

Opposition to it in the Commons.

Lord Hardwicke laid the bill on the table, and explained its provisions at the commencement of the session. On the second reading, the Duke of Bedford made a speech against it; but it passed easily through the Lords. In the Commons, however, it experienced the most furious opposition, particularly from Henry Fox, who was supposed to feel very deeply on the subject, because he himself had run off with Lady Caroline Lennox, eldest daughter of the Duke of Richmond, and married her without the consent of her family.

Attack by Henry Fox on Lord Hardwicke.

I cannot compliment him, or the other opposers of the bill, on the topics they employed. Instead of pointing out its real defects, which in practice were found oppressive and mischievous, they absurdly denied the right of Parliament to legislate upon the subject; they dwelt upon the aristocratic tendency of the bill; they denounced it as leading to vice and immorality; they prophesied that it would thin our

population, and endanger our existence as a nation. Fox, who kept the bill in committee many nights, became so heated by his own opposition to it against Murray, the Solicitor General, and other lawyers who defended it, that he inveighed bitterly against all lawyers and their jargon. He even indulged in a personal attack upon its author, whom he designated "the great MUFTI," whom he accused of pride and arrogance, and whose motives in bringing it forward he described as selfish and sordid.* On a subsequent evening he made an apology for these expressions, and declared his high respect for the learning and integrity of the noble and learned Lord he was supposed to have alluded to.

Attack by Lord Hardwicke on Henry Fox.

The bill at last passed the Commons by a majority of 125 to 56, and was sent back to the Lords. When the amendments were to be considered, the MUFTI resolved to have his revenge; and as the parliament was to be prorogued the following day, he knew that he was safe from a rejoinder. In a most unusual manner, he read his observations from a paper which he held in his hand, as if he were afraid to trust himself to express his excited feelings; and he commented, with much warmth and asperity, on the conduct of Fox, whom he designated as "a dark, gloomy, and insidious genius, an engine of personality and faction;" thus concluding his philippic: "I despise the invective, and I despise the retractation; I despise the scurrility, and I despise the adulation." † Fox, who had that evening attended some ladies to Vauxhall, being soon told by a good-natured friend how he had been abused in the House of Lords, gathered some young members of parliament round him, and told them, with great eagerness, that he wished the session had lasted a little longer, as, in that case, "he would have paid off the Lord Chancellor with interest." ‡

* I suppose it was from this vituperation that the vulgar said out of doors that the Chancellor was afraid his own children would form some low connection in marriage — whereas they were all already married into the first families.

† According to Cooksey, in the warmth of his invective he called his antagonist "that bad, black man." — *Cooks.* 103.

‡ 15 St. Tr. 84—86. It is curious how this hatred of Lord Hardwicke's Marriage Bill descended to Henry Fox's posterity. His son, the celebrated Charles James, several times abused it in the House of Commons; and I myself

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Death of Mr. Pelham.

The session of 1754 passed over without a single debate in the House of Lords; but, in the midst of the profoundest quiet, a storm of short duration was suddenly raised by the death of the prime minister, Mr. Pelham. Till his brother could decently appear, Lord Hardwicke was called into council by the King, and, according to his own account, he was for some days prime minister. In a letter from him to Mr. Pitt, which seems to have escaped the notice of historians and memoir writers, he gives an interesting account of this crisis. After apologising for not sooner replying to a communication he had received from Mr. Pitt, he proceeds: —"Besides this, I have lived in such continual hurry, ever since the day of our great misfortune, Mr. Pelham's death,—

Lord Hardwicke's letter to Mr. Pitt, describing the state of parties on the death of Mr. Pelham.

—— Ille dies, quem semper acerbum,
Semper honoratum (sic Dii voluistis) habebo,

that I have no time for correspondence.

"The general confusion called upon somebody to step forth; and the Duke of Newcastle's overwhelming affliction and necessary confinement threw it upon me. I was a kind of minister *ab aratro,* I mean the Chancery plough, and am not displeased to be returned to it, laborious as it is to hold. I never saw the King under such deep concern since the Queen's death. His Majesty seemed to be unresolved; professed to have no favourite for the important employment vacant, and declared that he would be advised by his cabinet council, with the *Duke of Devonshire added to them.*" * In a

have frequently heard his grandson, the late Lord Holland, in private, express high disapprobation of it — still adhering to the old doctrine, that marriage should be contracted when and where and how the parties please — and therefore still censuring the last Marriage Bill, which I had the honour to assist in framing, and which I consider quite perfect. I excuse a churchman who says that the Church alone ought to lay down regulations for marriages, and judge of its validity; but I cannot understand how a statesman who allows it to be a civil contract can deny that the manner of entering into it may be regulated by law as much as the manner of entering into a contract to purchase goods or to let land.

* The writer proceeds at great length to try to persuade Mr. Pitt that he had been labouring to bring him into office; and having stated the opposing difficulties, he thus concludes: "I agree that this falls short of the mark; but it gives encouragement. It is more than a *colour for acquiescence* in the eyes of the world; it is a demonstration of fact. No ground arises from hence to think of *retirement rather than of courts and business.* We have all of us our hours wherein we wish for those *otia tuta;* and I have mine frequently: but I have that opinion of your wisdom, of your concern for the public, of your regard and

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few days the Duke of Newcastle was placed at the head of the Treasury, and Lord Hardwicke was again secure in his office of Chancellor, and, if possible, with more influence. Now he was created Earl of Hardwicke and Viscount Royston. It is said that he might sooner have enjoyed this elevation, as far as the King was concerned, had not a superior power interposed. One of his biographers, in giving an account of his two daughters and of his wife, thus explains the delay. "Both these young ladies my informer has often seen at Powis House (his town residence) opening the door of their mother's apartment, (where he had the honour of attending her during the settling her domestic accounts, on Monday mornings,) and, with the most graceful deference, asking what company was expected, and in what manner they should dress for the day? Having received her Ladyship's directions, they courtesied and withdrew. On this she observed, that the Lord Chancellor was in a hurry to be made an Earl, which the King would make him any day he chose it, but I delay it as much as I can. These girls you see submitting, with so much humility and observance, to consult me even in the little article of dress, would perhaps, by the acquisition of titles, be transformed into fine ladies, and abate in their respects to me. Their fortune, too, on marriage must be doubled. Ten thousand pounds, which would be deemed a sufficient fortune for a Miss Yorke, must be made twenty to a Lady Elizabeth and Lady Margaret." * These young ladies had been recently married, the one to the celebrated navigator Lord Anson, and the other to Sir Gilbert Heathcote.

Lord Hardwicke created an Earl.

In the year 1755 the political horizon began to blacken. Domestic politics were much perplexed by the machinations of Leicester House, and by the Duke of Newcastle's doubts whether he should ally himself with Pitt or with Fox, while

Duke of Newcastle Prime Minister.

affection for your friends, that I will not suffer myself to doubt that you will continue to take an active part. There never was a fairer field in the House of Commons for such abilities, and I flatter myself that the execution of them will complete what is now left imperfect."[1]

* Cooksey, 38.

[1] *Lord Hardwicke to Mr. Pitt, 2d April, 1754.*

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hostilities being ready to break out on the Continent, the King, for the protection of Hanover, had entered into subsidiary treaties with Russia and Hesse Cassel, which were exceedingly unpopular. On the meeting of parliament these treaties were furiously assailed in the House of Lords, and the defence of them rested chiefly on the Chancellor; for the new prime minister, although he had considerable volubility of gabble, was quite incapable of reasoning, and was only listened to that he might be laughed at. There is no tolerable report of Lord Hardwicke's speech on this occasion, but we have what must be considered more curious and more valuable, the notes which he made for it, in his own handwriting, showing the immense pains which he still took to prepare himself, notwithstanding all his experience, and all the authority which he possessed.*

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Lord Hardwicke's mode of preparing to speak in the House of Lords.

* *Introductory Observations.*

Foreigners, if present, must be surprised.

No false colours needful to support — only to wash off false colours thrown upon it to sully it.

All the objections reducible to two general heads —

*Legal — Political.*

1. *Legal.*

Restrictive clause in Act of Settlement.

*State it.*

1. A previous objection.

No subsidiary treaty at all to be made without the previous approbation of parliament.

This depends on the general rules of the constitution.

Mere imagination.

Fertility of genius.

2. Strictly on the Act of Settlement.

No such subsidiary, in which the King's German dominions may be included, to be made without the previous approbation of parliament.

Construction of the clause of restriction.

Practice upon it ever since the late King's accession.

Treaties of guaranty.

General defensive alliances.

Treaty of Hanover, 1725.

Hessian Treaty of 1740.

Russian Treaty of 1741, almost in the same words with that of 1742.

Times of making these two last treaties.

Times of laying them before parliament.

Acts done by the administration in execution of these treaties.

Times of those acts.

Nobody then thought of suggesting it to be a breach of the Act of Settlement.

Reserved for the sagacity, the penetration of these times.

The last speech which Lord Hardwicke ever delivered in the House of Peers as Chancellor, was at the close of the

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May 24. 1756.

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2. Objections — *Political.*

These treaties were considered in three lights:

1. A measure to kindle — to invite — a general war upon the Continent.
2. A measure singly for the defence of the German dominions.
3. A preventive measure.

1. *The first Light.*

No colour for it.

Made against no power — offensive to no power.

A great prince often and freely mentioned.

Sorry for it — groundless — imprudent.

He has made no representation against it.

It has been explained to him in its true light — in the most amicable, confidential manner.

Communicated to his minister.

A Treaty of Defence against whatsoever power shall be the aggressor against the King or any of his allies.

*Qui capit ille facit.*

Whoever shall attack, becomes subject to this diversion, if the King thinks fit to make the requisition.

*France — Sweden.*

The party who makes the requisition, and who is to pay the subsidy, has the right to fix the place of the diversion.

Some of the dominions of Sweden almost as much within the vicinity as those of Prussia.

Sweden the most liable to the seduction of France — has ships of war. This is a most convenient check.

The King of Prussia a great and most respectable power — a prince of great parts and penetration. Not governed by passions of affection or resentment, but by his interest, judged of by his prudence. Apt to cast his eyes about to all quarters.

Would he like to give occasion to a French army to march into the empire on the one side, and a Russian army on the other?

*2d Light. A Measure singly for the Defence of Hanover.*

That is one object — not the sole one.

1. Defence of his Majesty's kingdoms.
2. ——— of his German dominions.
3. ——— of his allies.

It is even not for the defence of the German dominions at all, unless attacked on account of a British interest — a British cause — to be restrained in the very terms of the article — the most cautious, limited article that ever was penned.

*3d Light. A preventive Measure.*

This was said to be the most delusive pretence of all.

'Twas necessary to give harsh epithets to this way of stating it, because it is the true light, and the most justifiable one of all.

A rule in controversy to do so.

A great minister, who is dead,—much lamented, saw it in this light—in prospect of an American war approaching.

Would you not, if possible, prevent a general war upon the Continent?

Is that most likely to be done by being totally *unprovided*, only having a certain strength there?

Declared to *offend* nobody, to *defend* against any body.

session of 1756, when the disagreeable task was assigned to him of throwing out the Militia Bill. Hostilities with

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This question answers itself.

This treaty takes its rise naturally out of the treaty of 1742 — is built upon it.

*State how this stands.*

In the treaty of 1742, the Casus Fœderis is defined in the 4th article.

German dominions plainly included in it.

Kingdoms, provinces, states, and possessions quelconques.

The same description as in the treaty of Hanover.

Can any man doubt whether the German dominions were comprised in that?

The treaty of 1742 differs from other defensive alliances in the 7th article.

*State this.*

No article for totis viribus.

This new treaty takes its rise out of the 7th article.

But when it came to a subsidy of 500,000*l.* per ann. for 55,000 men, the King would not use words even to entitle himself to make such a requisition for Hanover, unless attacked on account of a British interest.

This operates as a restriction.

The most cautious, most gracious provision.

No partiality for Hanover prevailed here.

But I will go farther. Suppose, for a moment, that there should break out a war on the Continent.

This may happen whether you will or not.

No man of sense or integrity will maintain that you are, by your present circumstances, absolved from your defensive alliances.

How, then, will you perform them when called upon? Can you send your national troops? No. These troops and the Hessians must be your resort. No man of sense or integrity will say that you can quite separate yourselves from the Continent. A commercial kingdom must have connections there.

*Objections.*

*Obj.* 1. These troops to act by way of diversion only.

*Ans.* That diversion may be made in Sweden — in the Netherlands — against any power which shall join in the war against you — in the country of any prince who may join with France in attacking Hanover.

*Obj.* 2. The 7th article of this treaty speaks of the proximity of the country wherein the diversion may be made.

*Ans.* Only says *probably* — does not fix it to be there.

*Obj.* Russia will, if in any remote place, require subsistence for these troops.

*Ans.* Will have no right to it. What may be done by way of douceur is another question.

*Obj.* 3. 12th article big with another subsidy, for passage through the territories of Poland.

*Ans.* Nothing like it. Is it probable that Poland will refuse the passage to a Russian army? Look on their situation — their circumstances — the influence of Russia there. Asked no subsidy, nor made any difficulty of it, in 1747.

Suppose, for a moment, should be refused. They may be brought by sea — embarked at Riga in Livonia — landed at Lubeck — at Kiel, the capital of the Duke of Holstein. He is Great Prince of Russia — would he refuse a Russian army? At Slade, in the King's own dominions.

*Have now gone through.*

Will not attempt to speak to your passions — will appeal to your unbiassed judgments. What is there criminal — what is there impolitic in this treaty?

France had now commenced: the Duke of Richelieu had sailed on his expedition against Minorca; serious apprehensions were entertained of invasion; some German mercenaries were in English pay; there was still a strong prejudice in the country against any considerable increase of the regular army, and the rage was for a national militia, in which all should be liable to serve for a limited period, which should be officered by country gentlemen, and which should not be sent out of the kingdom. A bill for establishing such a force being introduced into the Commons and supported by Pitt, was so popular that the Government did not venture to oppose it there; but it was highly disagreeable to George II., as he thought it would interfere with his plan for hiring some additional Hanoverian regiments,—and the Duke of Newcastle was in too tottering a state to venture to thwart the King's wishes. The bill was therefore doomed to meet its fate in

Where is the ground, I should have said the shadow of pretence, for the strong epithets, the uncommon language?

Will not retort that —

Saying of one of the most able writers, — Mr. Chillingworth,

"Passionate expressions and vehement assertions are no arguments, unless it be of the weakness of the cause that is defended by them, or of the man that defends it."

As true a dilemma as ever was stated. Here it cannot be "of the men" that defend it — I know their abilities — only the other branch of the dilemma left — "the cause that is defended," etc.

But, for God's sake, from whence proceeds all that unprovoked, unprecedented invective? Have ministers in an instant changed their shapes? their natures?

One month panegyrised into angels — the next transformed into monsters.

This is not in the nature of things; not in the nature of measures — must proceed from some secret latent cause, which I will not pretend to explain.

*The present Administration.*

Are there not amongst them persons whose breasts glow with as much love for their country — are as popular in it — have as great a stake in the hedge of it; — as free from the least suspicion of corruption — from seeking to profit by the distresses of their country, as any that were ever known in this kingdom?

*But I go further.* How void of colour, of shadow, is the impotent menace thrown out — the calling upon the judicial capacity of parliament?

The thunder of your Lordships' justice is a tremendous thing — not wantonly to be played with.

Cannot people please themselves with courting power, unless it comes armed with vindictive judicial inflictions?

Puts me in mind of what I have read somewhere — I am not sure whether in my Lord Bacon or not. 'Tis in one of the moralisers upon the Heathen Mythology. He draws a moral out of the known fable of Jupiter and Semele.

'Tis this: "Whoever courts power, armed with the thunder of vindictive inflictions, it is ten to one but he is the first to suffer by it himself."—15 Parl. Hist. 643.

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Lord Hardwicke's speech in the House of Lords against the Militia Bill.

the Upper House. When it had been ably supported by Earl Stanhope and the Duke of Bedford, the Lord Chancellor left the woolsack, and delivered a very ingenious pleading against it, of which we have a full report corrected and circulated by himself. He first tried to show that the bill was unconstitutional, and dangerous to the just prerogative of the Crown, comparing it with the Militia Bill proposed, and at last carried, without the royal assent, in the Long Parliament. "The scale of power," said he, "in this government has long been growing heavier on the democratical side. I think that this would throw a great deal of weight into it. What I contend for is, to preserve the limited monarchy entire, and nothing can do that but to preserve the counterpoise." He next attached very undue weight to the omission of a clause to take away a writ of *certiorari*, to remove into the King's Bench proceedings against persons employed in the militia, whereby "the Judges of that Court would be made inspectors-general of this army." But he afterwards boldly and forcibly contended that it was much better that a state should be defended by a certain portion of the population who should permanently take to arms as a profession, than that all the citizens in rotation should embrace a military life. "For my own part," said he, "I never was more convinced of any proposition than of this, that a nation of merchants, manufacturers, artizans, and husbandmen defended by an army, is vastly preferable to a nation of soldiers. It is a self-evident proposition that, being educated and trained to arms, must give a distaste for all civil occupations. Amongst the common people it introduces a love of idleness, of sports, and at last of plunder. Consider, my Lords, the case of the northern parts of Scotland, and what you have been doing there for several years past. The practice and habit of arms made that people idle, averse to the labours of agriculture as well as the confinement of a factory,—followers of sports,—next of thieving,—and last, of rebellion, as *a more extensive source of plunder*. I say *a more extensive source of plunder*, because I have always been of opinion that the love of thieving and rapine has been one main ingredient in the Highland insur-

rections as well as Jacobitism and clanship. In order to cure this mischief, and to lead or compel them to be industrious, you have been obliged to disarm them by law. After having pursued these maxims, of which you are beginning to feel the benefit, will your Lordships now, by a new law, endeavour to introduce the same disposition and habit into the common people of England hitherto remarkable for their love of industry and their love of order?"* He likewise very strenuously opposed a clause in the bill, which, though petitioned against by the Dissenters, had passed without disapprobation from the established clergy, enacting, after the example of Switzerland and other Protestant states on the Continent, that the militia should be exercised on Sundays after divine service. "If this institution," said he, "be established among us by a law, I will venture to foretell that, notwithstanding the injunction to go to church there will be a constant fair and scene of jollity in the several parishes where those exercises are kept, and the face of religion will soon be abolished in this country."

The bill was rejected by a majority of 59 to 23, but its rejection materially contributed to the overthrow of the administration,— now at hand.

May 27. 1756. Admiral Byng's retreat without relieving Minorca.

Parliament being prorogued in a few days, Newcastle tried to strengthen himself by fresh negotiations with borough proprietors and with popular leaders, but news arrived of the retreat of Admiral Byng without an effort to relieve Port St. Philip's, and of the entire loss of Minorca. The nation was in a greater ferment than at the time of the Excise bill. Not without reason, the loss and disgrace so deplored were ascribed to the inefficiency of the present head of the government, and although he was strong in numbers in the House of Commons, and could do what he chose in the House of Lords, no one would join him. †

* 15 Parl. Hist. 706—769.

† When the defects of the Reform Bill are considered, the working of the old system should not be forgotten, — a striking instance of which is, that it imposed upon the King and the nation for several years, as prime minister the Duke of Newcastle, a man disliked and despised by both. I suppose this was the weakest administration that ever was entrusted with power in a free country. Lord Hardwicke was the only man of any capacity for business in the cabinet; and, after all, he was more of a lawyer than a statesman. Lord Waldegrave

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Weakness of the minister.

The immediate cause of the change of ministry was the sudden death of Sir Dudley Ryder, Lord Chief Justice of the Court of King's Bench. Pitt was at this time in hot opposition, and with such a theme as the disgrace of our flag, was ready on the meeting of parliament actually to crush the trembling premier. The only person in the House of Commons who "had courage even to look him in the face *," was Murray, the Attorney General, who indeed had fought many a stout battle with him, and who, if so inclined, might still have entered the lists against him as the champion of the government, but who now peremptorily insisted on his right to the vacant chiefship. He was not only, after Pitt, the best speaker in the House of Commons, but he was decidedly the greatest lawyer at the English bar; he had served many years as a law officer of the Crown with the highest distinction, and having gallantly and faithfully exerted himself in the conflict while there was a chance of victory, now that a general defeat was inevitable, he considered that he might honourably act upon the principle '*sauve qui peut.*' Newcastle, eager to retain him in the House of Commons, as a forlorn hope, plied him with various proposals — a Tellership of the Exchequer — or the Duchy of Lancaster for life, or a pension of 2000*l.* a year for life, in addition to the profits of his office as Attorney General. Nay, the bidding rose to 6000*l.* a year of pension: but Murray was inexorable; nor would he even on any terms agree to remain in the House of Commons only one session longer, or one month, or one day to support the address. He declared in plain terms, that if they did not choose to make him Lord Chief Justice, he was determined to resign the office of Attorney General, and that they must fight their own battles in the House of Commons, as he never again would enter that assembly. This spirited conduct had its proper effect; he was made Chief Justice, and a Peer, by the title of Baron Mansfield. On the day when he took

Murray resolves to leave the House of Commons, and insists on being appointed Chief Justice of the King's Bench.

gives us a lively picture of one of their deliberations, when the subject was what orders should be sent out to Admiral Hawke: "The Chancellor had more courage than the Duke of Newcastle; but, agreeable to the common practice of the law, was against bringing the cause to an immediate decision." — *Lord Waldegrave's Mem.*, p. 46.

* Lord Waldegrave's Mem. p. 82.

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his seat in the Court of King's Bench, the Duke of Newcastle, not daring to face parliament, resigned.

Resignation of Duke of Newcastle. Nov. 11. 1756.

Lord Hardwicke, who had prompted him in all his negotiations *, finding that they had all failed, expressed a resolution to share his fate, and publicly intimated that he only retained the Great Seal for a few days to enable him to dispose of some causes which he had heard argued in the Court of Chancery. He was strongly urged to continue Chancellor, with a view to strengthen the feeble administration now forming under that very honourable — not very able man, — the fourth Duke of Devonshire, — but he peremptorily refused. It is generally said that from age, and apprehended decline of faculties, he was anxious to retire. There is not the smallest foundation for this statement. His health and strength remained unimpaired, and his mind was as active, his perception as quick, and his judgment as sound, as when he served under Walpole †; and although his fortune was now enormous, his passion for encreasing it, by all lawful means, had grown in the same proportion. Others say (and they may be right) that he did not consider it honourable to continue in office after his great patron and friend had been obliged to resign, but

Lord Hardwicke resolves to resign.

His motives.

* "My Lord Chancellor, with whom I do every thing, and without whom I do nothing, has had a most material hand in all these arrangements. He sees and knows the truth of what I write; and he judges as I do, that no other method but this could have been followed with any prospect of success." — *Duke of Newcastle to Mr. Pitt*, 2d April, 1754. Lord Waldegrave gives a curious account of Lord Hardwicke's demeanour; when, as one expedient for strengthening the government, it was proposed to bring in Lord Bute, then supposed to be not only the leader of Leicester House, but the lover of the Princess of Wales: "The Chancellor, with his usual gravity, declared, that for his own part, he had no particular objection to the Earl of Bute's promotion; neither would he give credit to some very extraordinary reports; but that many sober and respectable persons would think it indecent, for which reason he could never advise his Majesty to give his consent." — *Lord Waldegrave*, 67.

† One is surprised to find such nonsense written by so clever a man as Jeremy Bentham: "At length perceiving, or imagining he perceived, his faculties growing rather impaired, he thought proper to resign the Seals, and accordingly waited upon the King, and delivered them into his Majesty's own hands," as if his resignation had been wholly unconnected with any political crisis. "Dreading the loud cry of the people for impeachments and inquiries," writes another, "into the authors of those counsels which had brought the nation into such a calamitous and desperate situation, he wisely shrunk from the storm he thought he saw bursting on his head, and in 1756 resigned the Seals." — *Cooksey*, 81. Historians and biographers make sad mistakes when they begin to assign motives — which, however, they often do as peremptorily as if they had lived in familiar confidence with those whose actions they narrate.

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the new ministry was still a Whig one, and no material change of policy was announced, either domestic or foreign, although the men now come in had clamoured for the "Militia Bill," and against the employment of Hanoverian troops. He more probably resigned because he knew that the ministry was very weak, and must be short-lived — perhaps anticipating that Newcastle, from his genius as a place-hunter, though contemptible in every thing else, might soon extricate himself from his present difficulties, and that they might return to office together, with a fair prospect of being able to carry on the government. Whatever his reasoning or his motives might be, — at a Council held at St. James's on the 19th of November, 1756, he actually did resign the Great Seal into the King's hands, who received it from him with many expressions of respect and regret.

His resignation.

# CHAPTER CXXXVI.

## CONTINUATION OF THE LIFE OF LORD HARDWICKE TILL THE DEATH OF GEORGE II.

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A.D. 1756.

Lord Hardwicke an Ex-chancellor.

LORD HARDWICKE after his resignation continued to possess in a high degree the respect of all classes and of all parties. Lord Waldegrave, rather disposed to depreciate him, says that "he resigned the Great Seal much to the regret of all dispassionate men, and indeed of the whole nation. He had been Chancellor near twenty years, and was inferior to few who had gone before him, having executed that high office with integrity, diligence, and uncommon abilities. The statesman might, perhaps, in some particular be the reverse of the judge; yet even in that capacity he had been the chief support of the Duke of Newcastle's administration."*

His fortune, and provision by office for his family.

He had no retired allowance, but besides his own immense fortune, not only his sons, but all his kith, kin, and dependants, were saturated with places, pensions, and reversions. If he had been required to sacrifice the patronage which enabled him to confer such appanages upon them, he would have looked with contempt upon the retired allowance of a modern Chancellor.

His first appearance at the King's levee as an Ex-chancellor.

It is a curious fact, that although George II. had taken leave of him very tenderly, and had pressed him to come frequently to Court, when he presented himself a few days after at the levee in a plain suit of black velvet with a bag and sword, he was allowed to make his bow in the crowd without the slightest mark of royal recognition. But as he was retreating surprised, and mortified, he was called back by the Lord in waiting: the King apologised for not having known him when he first appeared without his full bottom, his robes, and the purse with the Great Seal in his hand, and

* Lord Wald. Mem. 1756, p. 84.

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the highest scorn upon the haste and heedlessness with which the bill had passed in the House of Commons, and on his motion it was rejected without a decision."*

April, 1757. Formation of Mr. Pitt's first administration.

As every one had foreseen, the administration formed in the autumn of 1756 soon crumbled to pieces, and after the dismissal of Pitt and Lord Temple, for nearly three months the country was without a government, although a foreign war was raging, and dangerous discontent began to be engendered among the people. But, in the midst of disgrace and despondency, the nation was on the point of seeing the most glorious period of its annals; for now, instead of a single victory in a European campaign, the flag of England was to ride triumphant on every sea, and territories to which the island of Great Britain was a mère speck on the globe, were to be added to her dominion. This state of things was brought about by a coalition between the greatest and the meanest of statesmen, Pitt and the Duke of Newcastle, which was arranged chiefly under the auspices of Lord Hardwicke.† The first personal interview was brought about by the following letter from him to Mr. Pitt: —

"Wednesday, May 25. 1757.

"Sir,

Letters from Lord Hardwicke to Mr. Pitt.

"I have seen the Duke of Newcastle this morning, who is extremely willing and desirous to have a conference with you, and thinks it may be most useful to have a meeting first with yourself, before that which he will also be proud of having with my Lord Bute. He therefore proposes that his Grace and you should meet this evening at Lord Royston's, in St. James's Square, where I may attend you. The family is out of town, and that place will be better than any of our houses, and you (if you approve it) may come so far in your chair without hazard. I should think between eight and

* 15 Parl. Hist. 803—822.; Hor. Walp. Mem. Geo. 2., vol. ii. 687. The House of Lords, in this instance, instead of forbidding the publication of their proceedings, themselves very wisely made an order "that all the proceedings on the bill, with the evidence of the witnesses, should be printed and published under the authority of the House." — *Lords' Journ.* 1757.

† Lord Mansfield had previously tried his hand at mediating between the parties, but in vain.

nine o'clock would be a proper time, unless you have any objection to it — and then any other hour you shall name. — I beg you will send me notice to Powis House as soon as you can."

In a subsequent stage of the negotiation we find that, while Leicester House was still a party to it, Lord Hardwicke thus addressed Mr. Pitt: —

"Powis House, 16th June, 1757.

"Sir,

"I am to desire, in the Duke of Newcastle's name as well as my own, that we may have the honour of meeting you and my Lord Bute at your house this evening a little before nine. I have in like manner sent notice to Lord Bute. I found the Duke of Newcastle pleased, in the highest degree, with your visit and conversation this forenoon."

Difficulty about the disposal of the Great Seal.

The great difficulty in the way of a satisfactory settlement was the disposal of the Great Seal. The Duke of Newcastle was naturally eager to see Lord Hardwicke again Chancellor, that he might have his powerful support in that office, and Lord Hardwicke, himself professing to be tired of public life, would not have been unwilling to have resumed his labours, with the prospect now opening of a powerful government. They felt their way by at first proposing that he should have a seat in the cabinet, but conditions were annexed even to this concession, which showed the main object to be utterly impracticable. The fact was, that "the Great Commoner" and the Ex-premier, in the midst of much politeness and courtesy, thoroughly knew each other. The former determined to have all the power in his own hands, that he might pursue unchecked his vast plans for the nation's pre-eminence and glory, — while he was willing to throw to others all jobbing patronage, he could not bear the thought of seeing in high office, a man of character and weight, who, from ancient associations, would be disposed to stand by the sordid and meddling Duke.— Lord Hardwicke behaved exceedingly well upon this occasion. He did not allow his disappointment to be known to the world, and although he plainly saw that he could gain nothing for himself,— out of regard to his

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old patron, and (let us believe) out of regard to his country, then in imminent peril, he exerted himself to smooth away all difficulties. On the 22d of June thus he writes to Mr. Pitt: —

Lord Hardwicke assents in disposing of the Great Seal.

"Since I had the honour of seeing you last, I have talked, by way of sounding, in the best manner I could, to all the three persons who can now come under consideration in the disposition of the Great Seal. I think I see clearly the way of thinking and inclination of them all, which differs very little from the conjectures which we had formed concerning them. It is now so late, that if I should have any chance of finding you at home, I should only put you in danger of being out of time for the levee. . . . . I am very desirous that we should meet this evening, for precious moments are lost, and not innocently wasted, but to the detriment of that great and useful system which we are labouring to establish. I am most sincere and zealous in my endeavours to bring about what you so much wish for, a present arrangement of the Great Seal; but I see vast difficulties attending it."

Willes, the Chief Justice of the Common Pleas, and now first Commissioner of the Great Seal,— a good lawyer, and no politician, — was expected for some time to be the successful candidate, but he haggled for a peerage, to which the King would not consent. A charge of treachery towards Willes in this affair has been brought against Lord Hardwicke, but it is not supported by any evidence, nor, as he had given up all thoughts of the Great Seal himself, by any probability.* At last Pitt fixed upon a man who could not be formidable to him, who was ready to accept the office on very moderate terms, and who might be expected to perform decently well its judicial duties,— Sir Robert Henley, the Attorney General, — and urged that his appointment was a stipulation that had been made by Leicester House to reward a man who had long and faithfully adhered to that party.

The following letter from Lord Hardwicke to Mr. Pitt throws great light on these intrigues: —

* See Cooksey, 82.; and Life of Lord Northington, *post*.

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Lord Hardwicke to Mr. Pitt on the new ministry.

"Powis House, June 25. 1757, Saturday night.

"Dear Sir,

"However improper for a private man, yet *majora effugiens opprobria culpæ*, I did, in compliance with your commands, and those of our other friends who met on Thursday night, attend the King to-day, in order to know if he had any orders for me relating to the disposition of the Great Seal. I found his Majesty very grave and thoughtful on the news which came last night *, but calm. He soon entered into matter; and it is unnecessary, as well as hardly possible, to give you the detail of my audience in writing. His Majesty expressed his desire to settle his administration on the plan fixed, but thought there was no necessity of making a hasty disposition of so important an office as the Great Seal, an immediate part of it. However, the result was, that he absolutely refused to give a peerage with it †, which, I think, puts my Lord Chief Justice Willes out of the case; for his Lordship not only told me before, but has since repeated, that peerage is with him a condition *sine qua non*. I see the King inclines more to Mr. Attorney General; and when I stated to his Majesty what I collected or conjectured to be his views, he hearkened, and at last bade me talk to Sir Robert Henley, reduce his terms as low as I could, and bring them to him in writing on Monday.

"Since I saw my Lord Chief Justice Willes, I have seen Sir Robert Henley, who talks very reasonably and honourably. His proposals are:—First, a reversionary grant of the office of one of the tellers of the Exchequer to his son for life; second, a pension of 1500*l.* per annum on the Irish establishment to himself for life, to commence and become payable upon his being removed from the office of Lord Keeper, and not before, but to be determinable and absolutely void upon the office of teller coming into possession to his son. My present opinion is, that the King may be induced to agree to this on Monday; for when I hinted in my discourse at a pension upon Ireland, though his Majesty

* Defeat of the King of Prussia at Kolin.

† I suspect that Lord Hardwicke did not much combat this resolution, still wishing to have no more law Lords in the House.

treated it pretty severely at first, yet when I stated the several contingencies in which it might in this case never become any real charge upon the revenue, he said of himself, that made the case different.

"I found to-night by my Lord Chief Justice Willes, that he is to go to Kensington on Monday, to get some warrants signed, and thinks that either the King may speak to him, or that he may say something to his Majesty on this subject; but I am persuaded that will have no effect, unless he gives up the peerage, which I am of opinion he never will.

"If the affair of the Great Seal should be settled on Monday, in the person of Sir Robert Henley, as I conjecture it will, I see nothing that can distrust your beginning to kiss hands on Tuesday. For God's sake, Sir, accelerate that, and don't let any minutiæ stand in the way of so great and necessary a work. I long to see this scheme executed for the King's honour and repose, the harmony of his royal family, and the stability of his government. I have laboured in it zealously and disinterestedly, though without any pretence to such a degree of merit as your politeness and partiality ascribes to me. I see, with you, that attempts are flying about to tarnish it; but if it is forthwith executed on this foot, those will all be dissipated in the region of vanity, and instead of a *mutilated, enfeebled, half-formed* system, I am persuaded it will come out a complete, strong, and well-cemented one, to which your wisdom, temper, and perfect union with the Duke of Newcastle, will give durableness. In all events, I shall ever retain the most lively impressions of your great candour and obliging behaviour towards me, and continue to be, with the utmost respect,

"Dear Sir,

"Your most obedient and

"Most humble Servant,

"HARDWICKE."

From the same quarter conciliatory advice was likewise given to the Duke of Newcastle, and Mr. Pitt's famous administration was formed, which carried so high the renown of the English name; but in which I cannot boast that the

lawyers played any very distinguished part. Lord Hardwicke had nominally a seat in the Cabinet, but he seems to have been very little consulted by the autocratic prime minister.

A.D. 1757. Lord Hardwicke as a member of Mr. Pitt's cabinet.

Though now without the chance of office except through some very remote contingency, he still attended regularly in the House of Lords.* All opposition ceasing, insomuch that, for a whole session together, there was not a single division and hardly a debate, the hearing of appeals and writs of error was his chief labour.

Occasionally he was called upon to deliver his opinion upon measures concerning the administration of justice.

He opposes bill to amend Habeas Corpus Act.

In the session of 1758 there were various discussions in which he took the principal share, upon a bill to amend the Habeas Corpus Act, by authorising a single Judge in all cases to issue a writ of *habeas corpus* in vacation, and by allowing the truth of the return to be controverted by affidavit. Conceding the defective state of the law, he opposed the bill as ill-framed, and, on his motion, certain questions were referred to the Judges, with instructions to prepare another bill to be submitted to the House at the commencement of the following session of parliament.† I am sorry to say that, when the next session arrived, nothing was thought of except the taking of Quebec, and the subject was not again resumed till the very close of the reign of George III., when Serjeant Onslow's Act passed, most materially advancing the remedy by Habeas Corpus for the protection of personal liberty, the great glory of English jurisprudence.‡

Censure on Lord Hardwicke for doing nothing as a law reformer.

In praising Lord Hardwicke as an Ex-chancellor, a deduction should be made in respect of his having done so little to improve the laws and institutions of the country, when he had abundant leisure to prepare measures for this purpose, and one would have supposed sufficient influence to carry them through. From his long experience at the bar and as a Judge in courts of law and equity, many points

* As soon as Lord Hardwicke resigned the Great Seal, a commission appointed Lord Sandys Speaker of the House of Lords; and he acted in this capacity from 2d December, 1756, till 4th July, 1757, when Sir Robert Henley took his place on the woolsack as Lord Keeper. — *Lords' Journals.*

† 15 St. Tr. 897—923.

‡ Stat. 56 Geo. 3. c. 100.

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must have presented themselves to him, wanting "the amending hand." His own emoluments no longer in any degree depended upon the continuation of abuses, and he might surely have discovered some which might have been corrected without materially affecting the offices and reversions held by his family. Yet he suffered six years of health and mental vigour allotted to him after his resignation to pass away unmarked by a single attempt to extend his fame as a legislator. It is possible that he could get no one to second him effectually, and that if he had carried very useful bills through the House of which he was a member, they would have been neglected or thrown out "elsewhere."* For several sessions parliament only met to vote thanks and supplies, and the whole of the proceedings of the two Houses as reported, from the King's opening to his proroguing speech, would not fill more than a few columns of a modern newspaper.

Lord Hardwicke at the conclusion of the reign of George II.

I can find no farther trace of Lord Hardwicke for the rest of this reign. During the warlike triumphs which now dazzled the nation, he seems almost completely to have sunk from public notice, and it was hardly known that he had a seat in the cabinet. Indeed, unless when it happened that those who had favours to ask of the government were obliged to look to the Duke of Newcastle as the head of the Treasury, Mr. Pitt was regarded at home and abroad as the sole minister of the Crown. George II., though advanced in years, retained his health and his strength, and the existing state of affairs seemed likely to have a long continuance; but his sudden death brought about a party revolution, and soon placed all power in the hands of the Tories—who had been nearly banished from Court since the accession of the House of Brunswick.

* I can say, of my own knowledge, that this state of things has since actually existed. At different periods of our history, it has been very difficult to draw the notice of the representatives of the people to measures for the amendment of the law.

# CHAPTER CXXXVII.

## CONCLUSION OF THE LIFE OF LORD HARDWICKE.

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Oct. 25. 1760. Accession of Geo. III.

As soon as Lord Hardwicke heard of the decease of George II., he hurried to Carlton House, where the new Sovereign was to hold his first council. Here he was re-sworn a privy councillor, and was treated with the consideration due to his age and his services.

He must soon have seen the rising influence of Lord Bute; but till the quarrel between the favourite and the Duke of Newcastle, he rather showed a disposition to conform to the new *régime*.

March 1761. Lord Hardwicke lauds excessively the measure to prevent the dismissal of Judges at the commencement of a new reign.

When parliament assembled, a royal message being delivered, recommending that the Judges should not be removable on a demise of the Crown, he moved the address of thanks, and he delivered a very courtly speech most extravagantly over-praising that measure, and creating the delusion which still prevails that till then the Judges held during pleasure. In truth, by the Act of Settlement*, their commissions were "*quamdiu se bene gesserint;*" and although, by a misconstruction of that act contrary to the maxim that "the King never dies," the appointment was held only during the natural life of the reigning sovereign, only one Judge was removed on the death of George I., not one on the death of George II., and no minister at any time coming would have ventured to remove a competent Judge on the commencement of a new reign. At any rate, this boon from his Majesty was entirely at the expence of his successor. Nevertheless, Lord Hardwicke represented the measure as of

* 12 & 13 Will. 3. c. 2. The opinion of that great and upright magistrate, Sir Michael Foster, was clear, that after the Judges were required by the legislature to be appointed "during good behaviour," and it was provided that they should only be removable on the joint address of the two Houses of Parliament, they could not be removed on a demise of the Crown. "I think the last precedent was a precipitate proceeding, against the plain scope and intent of the act of settlement, and derogatory to the honour, dignity, and constitutional independence of the Judges, and of the Crown itself. I found myself only on the act of settlement, and the reason of things." Sir Michael Foster to Lord Chief Justice Wilmot, *Life of Wilmot*, 31.

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infinite importance to the impartial administration of justice, and to the rights and liberties of the people. "For doing this," said he, "his Majesty has laid his reasons before you. They are such as might have become, as they are truly worthy the most renowned legislators of antiquity." After praising our judicial system, subject to the capital defect that *quamdiu se bene gesserit* means "during the natural life of the King," he proceeds:—"*This*, which is the only defect remaining, his Majesty voluntarily and of his mere motion invites you to cure. Reflect upon the histories of former times—with what difficulties such acts have been obtained, I was going to say extorted, from the Crown by your ancestors—after many struggles—sometimes after more than one negative from the throne. Accept it now with thanks. Every one of your Lordships feel that gratitude in your own breasts which I have imperfectly attempted to express in the address which I have now the honour to propose for your adoption."*

Oct. 1761.

Lord Hardwicke continued steadily to support the government even after the resignation of Mr. Pitt, when being overruled in the Cabinet respecting a declaration of war against Spain, that haughty minister refused "to be responsible for measures he was no longer allowed to guide;" but the Earl of Bute, who would now bear no rival near the throne, and was impatient himself to be at the head of the Treasury, that he might have all patronage as well as power in his own hands, having forced out the Duke of Newcastle, the Ex-chancellor suddenly saw things in a very different light, and was of opinion that the policy of the new minister was about to tarnish and render unavailing all the victories won by his predecessor. This changed state of mind was produced by a letter from the Duke, giving an account of an interview with Bute, in which his Grace had threatened, as he had often before *effectually* done, to resign unless some job were conceded to him, and in which, to his great mortification, he had

Jan. 1762. Lord Hardwicke in opposition.

* 15 Parl. Hist. 1011., where will be seen the notes still extant in Lord Hardwicke's handwriting, which show that he continued the practice of writing out his speeches, almost at full length, before he delivered them.—With regard to this capital improvement, if he thought it of such importance, he might have explained why he did not himself propose it during the preceding reign.

been taken at his word. Thus piteously complained the ousted place-man to his confidant. "He answered me dryly that if I resigned, the peace might be retarded, but he never requested me to continue in office, nor said a civil thing to me afterwards while we remained together." * Newcastle felt so wretched out of place, that a few weeks after he opened a negotiation for his return, upon the basis that he should freely renounce the Treasury, and be contented with the Privy Seal — an office without patronage — so that, at the same time, his friend the Earl of Hardwicke might be made President of the Council. Such was his borough interest that Lord Bute listened to the proposal, till upon consulting with the Secretary to the Treasury, and examining the probable votes in both Houses, it was thought the approaching treaty of peace was sure to be approved of by large majorities. Being finally thrown aside, the Duke went headlong into opposition, took part with Mr. Pitt, caballed in the city, anticipated nothing but disgrace from the pending negotiation with France, and resolved to storm the Treasury. Lord Hardwicke, as far as was consistent with the decorum of his own character, vigorously assisted him in this enterprise.

Preliminaries of peace.

Parliament meeting on the 25th of November, the preliminary articles of peace, concluded at Fontainebleau on the 3d of the same month, were laid before both Houses, and on the 9th of December were debated in the House of Lords.† After rhetorical orations from the mover and seconder of an

* Duke of Newcastle to Lord Hardwicke, May, 1762. Adolph. i. 69. The ostensible dispute was about continuing the subsidy to the King of Prussia.

† It may be amusing to present to the reader a specimen of the parliamentary reporting of that day. This debate in the Lords being one of the most important and interesting which ever took place in that house, the following is the fullest account of it published in any journal or periodical work: — "The preliminary articles being read, Lord Wycombe moved an address of thanks to his Majesty. Many objections were made, and some severe reflections thrown out against the Earl of Bute, with appearances of heat and animosity. That nobleman defended his own conduct, with temper and decorum, in a well-connected speech, delivered with great propriety to the surprise of many, who did not think him so well qualified in the art of elocution. He gave a detail of the negotiation, and not only avowed himself a warm promoter of the peace, but even expressed a desire that his having contributed to the cessation of hostilities should be engraved on his tomb. He was seconded by the Earl of Halifax, and supported by a great majority. — 15 Parl. Hist. 1252. Fortunately we have a sketch of the debate in the handwriting of Lord Hardwicke, which I have made use of.

address of thanks to his Majesty, Lord Bute spoke with much more than his usual ability, entering at length into the whole course of the negotiations for peace, dwelling upon the terms that had been offered by Mr. Pitt, and contending that those actually concluded were, under all the circumstances, as favourable, and ought to be considered satisfactory by the country. He was answered by Lord Hardwicke in a speech which, considering the difficulties of his situation, displays great talent and dexterity. The criticisms on the several articles have ceased to be interesting, the public, without minute inquiry, having acquiesced in the conclusion, that the peace was not a bad one, although, if hostilities had been commenced at the proper time against Spain, the house of Bourbon might have been more effectually humbled, and might have been disabled from taking part against us in our impending disputes with our colonies. I shall, therefore, give only a few extracts from his speech which touch on more general topics: "I was in hopes that, after so successful a war, and particularly the great advantages gained over the enemy during the present year, a plan of peace would have been produced which would have been satisfactory to all lovers of their country; but rashness and precipitation have marked the negotiation on our part; we have proclaimed that we would have peace at any price or sacrifice; our opponents were made aware that this object was necessary to the party now in power, and the result can only give pleasure to those who regret our victories and envy our greatness. There is one part of the address in which I can most heartily concur — the dutiful professions and assurances given to his Majesty. Convinced, from the bottom of my heart, that no prince ever ascended the throne with more virtuous and public-spirited disposition, with greater love for his people and zeal for their happiness, with greater purity of mind and uprightness of heart, untainted even with a wish for any hurtful power, nay, filled with a detestation of it." He was most successful in his complaint of the preliminary articles being laid before Parliament, that an opinion might be asked upon them; whereas, he contended, that, according to precedent and constitutional propriety, the

Lord Hardwicke's speech against the peace.

Crown ought to act upon the responsibility of its ministers till a definitive treaty of peace is concluded. "Is the Parliament," he said, "to judge of these preliminaries, article by article, and to propose variations and additions? God forbid! 'Tis the prerogative of the Crown to make war and peace. The ministers of the Crown are to act in such matters at their peril. But in this instance the Crown has not yet executed that prerogative. No definitive treaty is made,—consequently no peace is made. We have only the heads, minutes, or notes, of a proposed arrangement between the two nations, by which neither party is bound. In this state of things Parliament ought not to be called upon to interpose. It may be said, that the strong approbation and applause which ministers ask by this address will strengthen their hands in making the definitive treaty. But I assert the direct contrary. I do not say so affectedly, and to maintain the proposition of a day; but I am really and seriously of opinion, that by this course of proceeding you disable them from doing that right to the King and to the nation for which, I make no doubt, they are solicitous. All Courts know that an English ministry treats with them under the inspection and animadversion of Parliament. This is a shield of defence to our negotiators against many demands, —a weapon in their hands to enforce others. If they are able to say, '*We cannot do this or that; the Parliament will not support us*,' a power that wants a peace from you, which is now the case of France, will give submissive attention to that argument. Many material stipulations require to be ascertained, explained, extended, added, or altered, before these preliminaries assume the form of a national compact. But if Parliament sanctions all in the gross, can you expect to succeed in any point which you have to make? It will be well known on the other side of the Channel, that Parliament cannot retract its approbation without stultifying itself, and without upsetting the administration. The noble and skilful person at present his Majesty's ambassador at Paris *, when any difference now arises, will talk to the winds. The French minister will laugh in your face, and tell you that 'you are not in earnest, for Parliament has approved of these articles;

* The Duke of Bedford.

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you must rest contented with them as they now stand, and with our interpretation of them.'"

Lord Granville, who had chiefly directed the negotiation, and was expected to take the lead in defending the preliminaries, was recently dead, and there was no one to answer these arguments; but whether they influenced any noble Lord's opinion, it was quite certain that they would influence no vote, and Lord Hardwicke found himself so weak in numbers that he did not venture to divide the House, or even to enter upon the Journals a protest against the address.* No material inconvenience arose in this case from the parliamentary discussion of the preliminaries; the definitive treaty of Paris having been satisfactorily concluded on the footing of them, and, notwithstanding Lord Hardwicke's objections, the same course of proceeding has since been adopted on similar occasions. Indeed, he was guilty of a fallacy in representing a preliminary treaty of peace as a mere *projet* from which either side may draw back, for it terminates hostilities, and by the law of nations, as far as it goes, it is binding on the parties, although there be certain points between them which remain to be adjusted.

Feb. 10. 1763.

I discover no trace of any debate in the House of Lords on the Definitive Treaty, and the only other speech which we know of Lord Hardwicke having delivered there, was on the 28th day of March, 1763, against the very obnoxious bill for levying a duty on cider in the hands of the maker. We have here again a proof of his indefatigable industry on all occasions which (be it ever remembered) was the great cause of his extraordinary success in life. There are extant in his own handwriting, notes for a very elaborate *philipic* against this tax. I shall give a few extracts, which I think are more interesting than a finished oration: —

Lord Hardwicke's speech against the Cider Bill.

"Shall go upon two great lines of this bill:

1. I look upon it as an extension and application of the excise laws to improper objects.

2. I look upon it as an additional land-tax upon the cider counties.

*First Point.*

All former laws; the plan of the Excise — confined to some particular trades

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* In the other house, after Mr. Pitt's famous *sitting* speech of three hours and a half, although he was obliged to go away from illness, the opponents of the peace were more adventurous; but they could only muster 65 against 319.

or occupations. — Do not extend to any subject who may happen to do a particular act in the course of his family affairs.

Such persons give their names; — voluntarily subject themselves to such laws as are or shall be, &c.

Such dealers have shops, warehouses, outhouses, &c. distinct.

In this case every person who makes any quantity of cider above, &c. is subjected.

This arises from laying the tax upon the maker, and not on the first buyer or retailer; and in this the present bill departs from the principle on which excises were admitted &c." *

He still goes on with his first point at considerably greater length, and then takes up the second of "the land tax on the cider counties," with equal minuteness, bringing forward statistical facts, and trying to show on principle, that such taxes fall upon the producer — not upon the consumer. We can only judge of the actual speech by the effect it produced, for it was attacked by the *heavy artillery* of Lord Bute. He rose to reply, and his delivery on this occasion was so particularly slow and solemn that Charles Townsend, standing on the steps of the throne, called out in an audible whisper, "*minute guns!*" † These might be considered as announcing the funeral of Lord Bute's ministry. The cider bill passed, but it added so much to the unpopularity accumulated upon him, and upon his countrymen, by the dismissal of Mr. Pitt, by the inglorious peace, by the royal favouritism on which his administration rested, by Churchill's "Prophecy of Famine," by Wilkes's "Dedication to the new edition of the Fall of Mortimer," and by the same unscrupulous writer's "North Briton," which had now reached the fortieth number, that the premier suddenly resigned, and was succeeded by George Grenville. The nation believed that he long continued secretly to direct all the measures of the Court. This

April 23. 1763.

* Lord Hardwicke seems to have furnished one of the topics for the celebrated No. 45. of the North Briton, published soon after, — which, commenting on the King's speech recommending a "spirit of concord," thus inveighs against the cider tax: "Is the spirit of concord to go hand in hand with the peace and excise through this nation? Is it to be expected between an insolent exciseman and a peer, gentleman, freeholder, or farmer, whose private houses are now made liable to be entered and searched at pleasure? Gloucestershire, Herefordshire, and in general all the cider counties, are not surely the several counties which are alluded to in the speech. The spirit of concord has not gone forth among them, but the spirit of liberty has, and a noble opposition has been given to the wicked instruments of oppression."

† Charles was very impartial between him and the Duke of Newcastle, who were both his near relations, saying, "Silly fellow, silly fellow! I think it is as well to be governed by my uncle with the blue riband, or my cousin with a green one."

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suspicion was carried to an extravagant length; but, although he pretended that, having gained all the objects of his ambition, he had betaken himself to "the domestic and literary retirement which he loved," there can be no doubt that, for a considerable time, in ministerial arrangements, he chiefly guided the King; and that he entertained a strong hope of being able ostensibly to resume his position, when the prejudices excited against him should have passed away.

April 19.

Parliament was hurriedly prorogued to prevent discussion; but the closing speech called forth No. 45. of the "North Briton;" general warrants were issued by Lord Halifax, Secretary of State, to arrest the author, printer, and publisher,—Wilkes was arrested,—Wilkes was sent to the Tower, —Wilkes was liberated by the judgment of the Court of Common Pleas; and the cry of "WILKES AND LIBERTY!" resounded throughout the realm. Although he afterwards asserted that he himself had never been much of a Wilkite, the administration was more unpopular than when Lord Bute was at the head of the Treasury; and the sudden death of the Earl of Egremont having deprived it of the minister whose abilities and influence had given it most weight, Lord Bute became sensible that some new arrangement was necessary, and opened negotiations with Mr. Pitt, the Duke of Newcastle, and Lord Hardwicke. A very interesting account of these is given in the following letter from the Ex-chancellor to his eldest son, which shows that he had greatly improved in the facility and elegance of his English composition since he wrote "PHILIP HOMEBRED" for the "Spectator;" and that if he had practised letter-writing, he might have rivalled Horace Walpole:

John Wilkes.

"Wimple, Sept. 4. 1763.

"My dear Lord*,

Lord Hardwicke's letter to his

"I have heard the whole from the Duke of Newcastle; and, on Friday morning, *de source*, from Mr. Pitt. But if

* I can only regret that he does not begin "My dear *Phil.*" This *mylording* of his own son, which would not have been practised by a Howard or a Spencer, confirms the charge against him that he preposterously piqued himself upon his nobility, and forces us to recollect the poor youth, who, under his mistress's stern orders, brought home cabbages from the greengrocer's, and oysters from the fishmonger's. According to a well-known story, the late Lord Althorp,

I was to attempt to relate in writing all that I have heard in two conversations of two hours each, *the dotterells and wheat-ears would stink* before I could finish my letter. Besides, it is as strange as it is long, for I believe it is the most extraordinary transaction that ever happened in any Court in Europe, even in times so extraordinary as the present.

son, giving an account of negotiations for forming a new ministry.

"I will begin as the affair has gone on, preposterously, by telling you, that it is all over for the present, and we are to come back *re infectâ.*

"It began as to the substance, by a message from my Lord Bute to Mr. Pitt, at Hayes, through my Lord Mayor, to give him the meeting privately at some third place. This, his Lordship (Lord B.) afterwards altered by a note from himself, saying, that as he did things openly, he would come to Mr. Pitt's house in Jermyn Street in broad day-light. They met accordingly, and Lord Bute, after the first compliments, frankly acknowledged that his ministry could not go on, and that the King was convinced of it; and therefore he (Lord B.) desired Mr. Pitt would open himself frankly, and at large, and tell him his ideas of things and persons with the utmost freedom. After much excuse and hanging back, Mr. Pitt did so with the utmost freedom indeed, though with civility. Here I must leave a long blank to be filled up when I see you. Lord Bute heard with great attention and patience; entered into no defence; but at last said, 'If these are your opinions, why should you not tell them to the King himself, who will not be unwilling to hear you?'—'How can I presume to go to the King, who am not of the council, nor in his service, and have no pretence to ask an audience? The presumption would be too great.'—'But suppose his Majesty should order you to attend him, I presume, sir, you would not refuse it.'—'The King's command would make it my duty, and I should certainly obey it.'

"This was on last Thursday sevennight. On the next day (Friday) Mr. Pitt received from the King an open note, unsealed, requiring him to attend his Majesty on Saturday

when a distinguished senator, was thus addressed by his noble father: "Ring the bell, Jack."

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noon, at the Queen's Palace, in the Park. In obedience hereto, Mr. Pitt went on Saturday at noon-day, through the Mall, in his gouty chair, the boot of which (as he said himself) makes it as much known as if his name was writ upon it, to the Queen's Palace. He was immediately carried into the closet, received very graciously; and his Majesty began, in like manner as his quondam favourite had done, by ordering him to tell him his opinion of things and persons at large, and with the utmost freedom; and I think, did in substance make the like confession, that he thought his present Ministers could not go on. The audience lasted three hours, and Mr. Pitt went through the whole upon both heads more fully than he had done to Lord Bute, but with great complaisance and douceur to the King; and his Majesty gave him a very gracious accueil, and heard him with great patience and attention. And Mr. Pitt affirms that, in general, and upon the most material points, he appeared by his manner and by many expressions to be convinced. But here I must again avail myself of my long blank, and make only one general description; that Mr. Pitt went through the infirmities of the peace; the things necessary and hitherto neglected to improve and preserve it; the present state of the nation, both foreign and domestic; the great Whig families and persons which have been driven from his Majesty's council and service, which it would be for his interest to restore. In doing this he repeated many names; upon which his Majesty told him, there was pen, ink, and paper, and wished he would write them down. Mr. Pitt humbly excused himself, by saying, that would be too much for him to take upon him; and he might, upon his memory, omit some material persons, which might be subject to imputation. The King still said he liked to hear him, and bid him go on; but said, now and then, his honour must be consulted; to which Mr. Pitt anwered in a very courtly manner. His Majesty ordered him to come again on Monday, which he did, to the same place and in the same public manner."

[Here comes in a parenthesis, that on Sunday, Mr. Pitt went to Claremont, and acquainted the Duke of Newcastle with the whole, fully persuaded from the King's manner and

behaviour that the thing would do; and that on Monday the outlines of the new arrangement would be settled. This produced the messages to the Lords, who were sent for. Mr. Pitt undertook to write to the Duke of Devonshire, and the Marquis of Rockingham, and the Duke of Newcastle to Lord Hardwicke himself.]

"But, behold the catastrophe of Monday. The King received him equally graciously; and that audience lasted near two hours. The King began, that he had considered of what had been said, and talked still more strongly of his honour. His Majesty then mentioned Lord Halifax for the Treasury, still proceeding upon the supposition of a change.

"To this Mr. Pitt hesitated an objection — that certainly Lord Halifax ought to be considered, but that he should not have thought of him for the Treasury. Suppose his Majesty should think fit to give him the Paymaster's place. The King replied, 'But, Mr. Pitt, I had designed that for poor G. Grenville, he is your near relation, and you once loved him.' To this the only answer made was a low bow. And now here comes the bait. 'Why,' says his Majesty, 'should not my Lord Temple have the Treasury? you would then go on very well.'—'Sir, the person whom you shall think fit to honour with the chief conduct of your affairs cannot possibly go on without a Treasury connected with him. But that alone will do nothing. It cannot be carried on without the great families who have supported the Revolution government, and other great persons, of whose abilities and integrity the public has had experience, and who have weight and credit in the nation. I should only deceive your Majesty, if I should leave you in an opinion that I could go on, and your Majesty make a solid administration on any other foot.' — 'Well, Mr. Pitt, I see (or I fear) this will not do. My honour is concerned, and I must support it. '*Et sic finita est fabula.*' "Vos valete," but I cannot with a safe conscience add, "*plaudite.*" I have made my skeleton larger than I intended at first, and I hope you will understand it. Mr. Pitt professes himself firmly persuaded that my Lord Bute was sincere at first, and that the King was in earnest the first day; but that on the inter-

mediate day, Sunday, some strong effort was made which produced the alteration.

"Mr. Pitt likewise affirms that, if he was examined upon oath, he could not tell upon what this negotiation broke off, whether upon any particular point, or upon the general complexion of the whole; but that if the King shall assign any particular reason for it, he will never contradict it.

"My story has been so long, though in truth a very short abridgment, that I shall not lengthen it by observations, but leave you to make your own: it will certainly be given out, that the reason was the unreasonable extent of Mr. Pitt's plan — a general rout; and the minority, after having complained so much of proscriptions, have endeavoured to proscribe the majority. I asked Mr. Pitt the direct question, and he assured me, that although he thought himself obliged to name a great many persons for his own exculpation, yet he did not name above five or six for particular places. I must tell you that one of these was your humble servant for the President's place. This was entirely without my authority and privity. But the King's answer was, 'Why, Mr. Pitt, it is vacant, and ready for him; and he knows he may have it to-morrow, if he thinks fit.'

"I conjectured that this was said with regard to what had passed with poor Lord Egremont, which made me think it necessary to tell Mr. Pitt in general what had passed with that Lord (not owning that his Lordship had offered it directly in the King's name), and what I had answered, which he, in his way, much commended.

"This obliges me to desire that you will send me by the bearer my letter to you, which you were to communicate to my Lord Lyttleton, that I may see how I have stated it there, for I have no copy.

"I shall now *make you laugh*, though some parts of what goes before make me melancholy, to see the King so committed, and his Majesty submitting to it, &c. But what I mean will make you laugh, is, that the Ministers are so stung with this admission that they cannot go on, (and what has passed on this occasion will certainly make them less able to go on,) and with my Lord Bute's having thus carried them to market

in his pocket, that they say Lord Bute has attempted to sacrifice them to his own fears and timidity; that they do not depend upon him, and will have nothing to do with him; and I have been credibly informed that both Lord Halifax and George Grenville have declared that he is to go beyond sea, and reside for a twelvemonth or more. You know a certain cardinal was twice exiled out of France, and governed France as absolutely whilst he was absent as when he was present.

"Yours affectionately,

"HARDWICKE."

Lord Hardwicke struck with a mortal disorder.

While the Ex-chancellor was thus speculating upon changes of administration, and his own return to office, he was struck with a mortal disorder. Hitherto he had enjoyed uninterrupted health, and such attention had he paid to temperance and to exercise when in his power, that, although originally by no means of a robust constitution, he was still active in his body, and the hand of time had been laid so gently on his frame, that he seemed to be only entering into a green old age.

Being made aware that he could not hope to recover, he submitted to the will of Providence with firmness, and even with cheerfulness, — gratefully reflecting on the long and singularly prosperous career which he had run.

Nov. 15. 1763.

When parliament again met he was unable to take part in the stormy discussions which arose out of the prosecution and imprisonment of Wilkes; but his faculties were still unimpaired, and, though confined to his bed, he could occasionally see and converse with his political as well as his private friends.

His opinion of parliamentary privilege in Wilkes's case.

A resolution being moved and carried in the House of Commons, "that privilege of parliament does not extend to the case of writing and publishing seditious libels," was sent up to the Lords, who were called upon to concur in it. As Mr. Wilkes had attacked Lord Bute so violently and so successfully, he was warmly supported by the opposition,—and Pitt in one House and Earl Temple in the other, boldly resisted the resolution; — but Lord Hardwicke, though a strong party-man to the last, when consulted, expressed a clear

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opinion "that privilege of parliament does not extend to prevent a member from being prosecuted and imprisoned for any crime; that the words in the common *cantelena*, 'treason, felony, and breach of the peace,' are only put as examples, and that it would be most discreditable to parliament to assert the right of all its members to commit with impunity all misdemeanours which did not amount to an actual breach of the peace." In consequence of this opinion, the Duke of Newcastle, and the peers more immediately connected with him, refused to vote with Lord Temple, or to join in his protest — much to the annoyance of that nobleman.

Nov. 28. 1763.

His death.

This was Lord Hardwicke's last interference with politics. Finding that his disease made rapid progress, he deliberately settled his worldly affairs, and then devoted himself to preparation for the awful change which was at hand. Amidst the most affectionate attentions of his family, he expired at Powis House on the 6th of March, 1764, in the seventy-fourth year of his age. He was buried at Wimple, where a monument is erected to his memory, with an inscription, which after stating the dates of his several promotions, thus eulogises him: —

His epitaph.

"The Strength and Quickness of his Parts, joined to an unwearied Application and Industry, recommended him, soon after his entrance into Business, to an extensive course of Practice, and advanced him, before the usual Age, to those Inferior Honors of the Robe, from which is open'd the fairest Prospect to the Highest. In this Situation as an Advocate, and a Servant of the Crown, his Skill in the various Branches of the Law and Constitution, his Eloquence, his Integrity, his Zeal for Justice, and his Candor and Tenderness to the Subject, were universally acknowledged and admired. In each of the Courts where he presided, his Firmness and Dignity, his clear and ready Apprehension, his patient and close Attention, the Compass and Profoundness of his Knowledge, and the Justice of his Decisions, afforded the most valuable Instruction to the Profession, and the Highest Satisfaction to the Parties. His Eloquence in Parliament was natural and manly, his Method exact, his Reasoning powerful and persuasive, his Manner modest yet commanding, his Voice clear and harmonious; and all these received a lustre and a force, almost irresistible, from the acknowledged Integrity of his Character. When he advised in the more Secret Councils of State, his superior Judgement, his long Experience, his Acquaintance with History and Treaties, enabled him to state precisely, to debate fully, and to determine wisely and usefully to the Public those arduous Questions which were the Subject of Deliberation. In his Political Connexions, as well as private Friendships, he was uniform and constant. In his Religious Principles, he was attached to the National Establishment, with that Spirit of Moderation and Charity which becomes a sincere and enlightened Member of a Protestant Communion. In private Life he was distinguished by the Amiableness of his Manners, his engaging Address, and his general Benevolence; ever easy and cheerful in the Conversation of his Family and Friends; and retaining the Taste of his early Classical Studies amidst his most laborious and highest Employments. Thus he lived during the Exercise of his great Offices; and in his

**Retirement was honor'd and revered by the whole Nation, and distinguished by the Approbation and peculiar Favor of his Sovereign, till his 74th year; when a long and painfull Disorder, supported by an uncommon patience, and a Strength of Mind unimpaired, put a Period to his Life, March the 6th, 1764."**

His character.

These are the effusions of filial piety; but notwithstanding his failings, and the censure to which some parts of his conduct may be liable, he is certainly to be considered a very eminent and very meritorious personage in English history. Entering public life very early, he lived to a great age in very interesting times, and he acted an important part in many of the events which distinguished the century in which he flourished.

His long career.

He had heard speeches delivered from the throne by William III. and by George III.; he had seen the reins of government in the hands of Godolphin and in the hands of Pitt; he had witnessed the rejoicings for the victory of Blenheim and for the capture of Quebec; his ears had been split with cries of "*Sacheverell and High Church!*" and with cries of "*Wilkes and Liberty!*" he had been acquainted with Bolingbroke and with Burke; he had marked the earliest burst of admiration called forth by the poetry of Pope and by the poetry of Churchill; he himself had been fifty years a member of the legislature, holding a most distinguished station in either House of parliament; he had filled various important offices with singular ability; he had held the highest civil office in the kingdom longer than any of his predecessors (one excepted), since the foundation of the monarchy, and with greater applause than any of his predecessors had ever gained or any successor could hope for; he had been mainly instrumental in keeping the reigning dynasty on the throne, by the measures which he advised for crushing a dangerous rebellion raised to restore the legitimate line; he was the great legislator for Scotland, freeing that country from the baronial tyranny by which it had been immemorially oppressed; in England he was the finisher and almost the author of the great Code of Equity to which his name might justly be attached; though of low degree, in his own lifetime his blood was mingled with that of the Campbells and the Greys, and he established one of the most potent families in the nobility of Britain. Unceasing good luck

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attended him through life; but along with that luck such results required lofty aspiration, great ability, consummate prudence, thorough control of temper, rigid self-denial, and unwearied industry. His chief glory is, that, as a public man, he was ever consistent and upright. Compare him with preceding and with succeeding Chancellors, who started by making themselves formidable as the ultra-zealous champions of freedom, and who rose by renouncing and by persecuting the principles which they professed. He was from boy to old man a sound Whig—loving our monarchical form of government, but believing that it exists for the good of the people, and that for the good of the people the prerogatives of the Crown are to be restricted, and are to be preserved. The heaviest charges I find brought against him by impartial writers, are love of money and arrogance of manner in common society. "He was undoubtedly an excellent Chancellor," says Lord Waldegrave, "and might have been thought a great man had he been less avaricious, less proud, less unlike a gentleman."*

His love of money and bad manners.

"The stately and ceremonious reception of his visitors on a Sunday evening," says Cooksey, "was insipid and disgusting in the highest degree. Stranger as he was to the life and habits of country gentlemen, he treated them with insulting inattention and hauteur. Came they from ever so great a distance, either to visit his Lordship or to see his place, their horses were sent for refreshment to the 'Tiger,' a vile inn near half a mile distant, as I have experienced more than once. He submitted indeed, like other Lords, sometimes to entertain the *natives*, but with that visible and contemptuous superiority as disgusted rather than obliged them. When in high good-humour, he had two or three stock stories to make his company laugh, which they were prepared and expected to do. One was of his bailiff Woodcock, who, having been ordered by his Lady to procure a sow of the breed and size she particularly described to him, came one day into the dining-room, when full of great company, proclaiming, with a burst of joy he could not suppress, '*I have been at Royston fair, my Lady, and got a sow exactly of*

Cooksey's account of him in society.

* Mem. p. 20.

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*your Ladyship's breed and size.'* He also used to relate an incident that occurred to him in a morning ride from Wimple. Observing an elegant gentleman's house, he conceived a wish to see the inside of it. It happened to be that of Mr. Montague, brother to Lord Sandwich, who, being at home, very politely, without knowing his Lordship, conducted him about the apartments, which were perfectly elegant; and expatiated on the pictures, some of which were capital. Among these were two female figures, beautifully painted, in all their native naked charms. '*These ladies,*' says the master of the house, '*you must certainly know, for they are most striking likenesses.*' On the guest's expressing his perfect ignorance, '*Why, where the devil have you led your life, or what company have you kept,*' says the Captain, '*not to know Fanny Murray and Kitty Fisher, with whose persons I thought no fashionable man like you could be unacquainted?*' On my taking leave, and saying, '*I should be glad to return his civilities at Wimple,*' what surprise and confusion did he express on his discovering he had been talking all this *badinage* to Lord Hardwicke!" *

Chalmers.

Others have given a more favourable view of his manners, representing that "he rose from the fatigues and anxieties of business to the enjoyment of the society of his family and his friends, with the spirits of a person entirely vacant and disengaged, preserving in old age the vivacity as well as appearance of youth, and ever uniting the characters of dignity and amiableness." †

His estrangement from literature and men of letters.

The censure of his love of money should be softened by the recollection of the penury from which he had suffered in his youth, and from the consideration that it never exposed him even to the suspicion of corruption. A graver fault, and attended with less palliation, may, I think, be imputed to him in his abandonment of literature and literary men. It might have been expected that, in the breast of one who had been taken to dine at the Kit-cat, who had acquired credit by writing a paper in the Spectator, and who had witnessed the glory shed over Lord Somers in his decline by continuing the protector and the associate of wits and philosophers, the

* Cooksey, 101.

† Life, by Chalmers.

sacred flame once kindled would have smouldered, ready to burst out when freed from the load of Chancery precedents and official cares. But as he advanced in life he seems to have contracted a contempt for all liberal studies, and to have valued men only according to their rank, their riches, and their political influence. I find no trace of his having the smallest intercourse or correspondence, except with lawyers, or the leaders of faction. He obtained a pension for Mallet (a man doing no honour to the country of his birth), under pretence of his literary celebrity, but, in reality, for writing a pamphlet when the nation was exasperated by the ill conduct and disasters of the war, to turn the public resentment and vengeance from the ministry upon Admiral Byng. Dr. Birch, well known as a scholar and historical collector, had been tutor to his sons, and had dedicated the "Thurloe State Papers" to the Lord Chancellor himself. One of his pupils, much attached to him, seeing him neglected and starving, thus ventured to address the great distributor of church patronage: — "From my own acquaintance with him I can only confirm the general character he bears of being a clergyman of great worth, industry and learning, subsisting at the mercy of booksellers and printers, without any preferment but a small living in the country, which will scarce keep a curate. He is a person of excellent heart as well as head, and by his diligence and general knowledge in most parts of learning, may be made extremely useful to the public." The reply was an offer of a living in Wales of 30*l.* a year, which Dr. Birch declined accepting. Lord Hardwicke thought it his duty to dispose of ecclesiastical preferments in his gift — with a view to increase his own political influence, — without any scrupulous regard for the interests of religion, and — without the slightest respect for scientific or literary merit.* He has had his reward. While Somers, Harcourt, and Murray are immortalised in the poems of Addison and Pope, Hardwicke was only praised by the dull authors of treatises on the practice of the Court of Chancery, or dull compilers of Chancery

* When he was actually going out of office, and jobbing in church preferment could be of no avail to him, he gave Dr. Birch a better living in the city of London.

Reports. With all his titles and all his wealth, how poor is his fame in comparison of that of his contemporary, SAMUEL JOHNSON, whom he would not have received at his Sunday evening parties in Powis House, or invited to hear his stale stories at Wimple! A man desirous of solid fame would rather have written the "Rambler," the "Vanity of Human Wishes," "Rasselas," or "the Lives of the Poets," than have delivered all Lord Hardwicke's speeches in parliament, and all his judgments in the Court of Chancery, although the Author had been sometimes obliged to pass the night on the ashes of a glasshouse, and at last thought himself passing rich with his 300*l.* pension—while the Peer lived in splendour, and died worth a million.*

His letter to Lord Kames.

Beyond his efforts in English prose composition, which I have already mentioned, I am not aware of any thing from Lord Hardwicke's pen, except his celebrated letter to Lord Kames. That profound jurist and philosopher, about to publish his treatise on "Equity," sent the "Introduction," explaining his general views on the subject in MS., to the great Ex-chancellor, whose fame was, if possible, higher in Scotland than in his own country. Lord Hardwicke's answer is a very masterly performance †, and shows that he might have left some permanent monument of his fame to have placed him in the same category as Sir Thomas More, Lord Bacon, and Lord Clarendon,—great English Judges, who enriched the literature of their country. He not only gives an admirable sketch of the origin of Equity Jurisdiction in England, but enters deeply into the general principles on which the essential distinction between Law and Equity rests, and on which they are respectively to be administered. Unlike mere Chancery practitioners, whom favour or accident has elevated to high judicial office, and

* It is whimsical enough that Johnson himself for a moment wished that, instead of being at the head of English literature, he had been a "law Lord." But at other times he showed a consciousness of his own superiority to Chancellors and Peers: "It is wonderful, Sir, with how little real superiority of mind men can make an eminent figure in public life."[1]— Hardwicke is to Johnson as the most interesting Life that could be written of Hardwicke is to Boswell's "Life of Johnson,"—the proportion of a farthing candle to the meridian sun.

† June 30. 1759. Lord Woodhouselee's "Life of Lord Kames," i. 237.

[1] Bos. iv. 191.

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who, religiously persuaded that Chancery practice is the perfection of human wisdom *, sincerely and strongly think that whatever differs from it must be absurd and mischievous,—while he contends, like Lord Bacon †, that the administration of law and equity should be committed not to the same court, as in Scotland, but to separate courts, as in England,—he liberally admits that there are partial advantages and inconveniencies belonging to both systems, and that there is ground for considerable difference of opinion upon their rival pretensions. He afterwards discusses, in a most luminous manner, the important question, how far in the Prætorian jurisdiction the conscience of the Judge, or *arbitrium boni viri*, is to be controlled,—and beautifully shows the advantage of general rules in restraining caprice as well as corruption, and in letting the world know how civil rights are defined and will be adjudicated.

Whether a good classical scholar?

Lord Hardwicke has been held up by some of his injudicious flatterers as a great classical scholar, and we are referred to a letter which he wrote in the year 1724, "SAMUELI CLERICO," in which he asks the learned Dr. Samuel Clerk to revise an epitaph composed on one of the Bradford family to whom he was related by marriage in consequence of a request "a Cocceio uxoris meæ germano, tibi bene noto." ‡ But there is nothing in this letter beyond what could be accomplished by a lad who had been at an ordinary grammar school; and Lord Hardwicke must be cited as an instance of success—not in consequence of a finished education, but in spite of a very defective one. By the anxiety with which he gave his own sons the benefit of accademical discipline,

* Once, in a conversation I had with a very eminent counsel at the Chancery bar, who wore a silk gown, respecting the effect of "notice to a purchaser of an unregistered deed," I opposed his opinion by citing a decision in point of Chancellor d'Agesseau. "Ah!" said he gravely, "but had the French Lord Chancellor called in the assistance of the French Master of the Rolls?" This reminded me of the English tar, who, returning home from a French prison, said to his companion, "Jack, what rum'ns 'em 'ere Frenchmen be! Do you know, Jack, that they call a *horse* a SHUVEL, and a *hat* a CHOPPER?"

† "Apud nonnullos receptum est, et jurisdictio, quæ decernit secundum æquum et bonum, atque illa altera quæ procedit secundum jus strictum, iisdem curiis deputentur; apud alios autem, ut diversis: omnino placet curiarum separatio. Neque enim servabitur distinctio casuum, si fiat commixtio jurisdictionum; sed arbitrium legem tandem trahet."—*De Aug. L.* viii. c. 3. aph. 45.

‡ Birch's MSS. Brit. Mus.

he showed the consciousness he felt of the unequal fight he had fought from the want of it.

His poetry.

There is extant one specimen of his poetical composition, which will perhaps be considered as justifying him in for ever renouncing the Muses, and trusting his reputation with posterity to *Atk.* and *Ves. Sen.* Lord Lyttleton had written a copy of verses, addressed to the Countess of Egremont, entitled "VIRTUE and FAME," supposed to be a Dialogue between these two ladies, in which VIRTUE, after drawing the character of the best of wives and mothers, concludes by setting FAME right, who thought this must be the wife of a country parson,

"Who never saw the court nor town,
Whose face is ugly as her gown.
'Tis the most celebrated toast
That Britain's spacious isle can boast;
'Tis princely Petworth's noble dame;
'Tis Egremont — go tell it, Fame."

*Addition extempore, by Lord Chancellor Hardwicke.*

"Fame heard with pleasure — straight replied,
First on my roll stands Windham's bride;
My trumpet oft I've rais'd to sound
Her modest praise the world around;
But notes were wanting; canst thou find
A muse to sing her face, her mind?
Believe me, I can name but one,
A friend of your's — 'tis Lyttleton!"

No personal anecdotes of him.

I am sorry that neither from print nor the tradition of Westminster Hall can I collect any personal anecdotes or noted sayings of Lord Hardwicke to enliven my dull narrative of his Life.* I suspect that, unlike his immediate successor, studying his dignity very uniformly, and always very observant of decorum, he added little to the "*ana*" of his age. We must not look for the workings of his genius

* There is one story related of him worth mentioning, which shows that he followed the precedent of Lord Chancellor Cowper in being civil to the House of Cromwell. There being a suit heard before him in which Oliver's grandson was a party, while the opposite counsel was very irrelevantly and improperly inveighing against the memory of the Protector, the Lord Chancellor said, "I observe Mr. Cromwell standing outside the bar there inconveniently pressed by the crowd; make way for him, that he may sit by me on the bench." It is needless to add, that the representative of the family being so noticed, the orator felt rebuked, and changed his tone.

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in Joe Miller, but exclusively in the Parliamentary History and the Chancery Reports.

I have now only to state that "he was one of the handsomest men of his time, and bestowed great attention to his appearance and dress." There were reports circulated of his gallantries with a Lady B——, and with the celebrated Mrs. Wells; but for these there was as little foundation as for his conjectured intimacy with Fanny Murray and Kitty Fisher. He was a perfect pattern not only of temperance and sobriety, but also of conjugal fidelity.

Observation upon him by Horace Walpole.

Before proceeding to speak of his wife and his descendants, I will further assist the reader to come to a right judgment upon his merits and defects, by presenting characters of him as drawn by three eminent contemporaries who knew him well; the first being his greatest vituperator, the second his most indiscriminate eulogist, and the third speaking of him, I think, in the words of impartiality and truth. Says Horace Walpole: "He was a creature of the Duke of Newcastle, and by him introduced to Sir Robert Walpole, who contributed to his grandeur and baseness, in giving him an opportunity of displaying the extent of the latter, by raising him to the height of the former. He had good parts, which he laid out so entirely upon the law in the first part of his life, that they were of little use to him afterwards, when he would have applied them to more general views. On his promotion, he flung himself into politics, but, as he had no knowledge of foreign affairs but what was whispered to him by Newcastle, he made a poor figure. In the House of Lords he was laughed at, — in the cabinet despised."

Danes Barrington.

On the other hand, he is extravagantly praised by another Honourable,—Danes Barrington,—who considers him above all human failing: "There is not a report of a single decision of Lord Bacon; some few indeed (and those unimportant ones) by Lord Nottingham: we have hardly a determination of consequence by the great Lord Somers: and though he was succeeded by lawyers of ability and eminence, yet it may be said that we owe the present beneficial and rational system of equity to the peculiar national felicity of the greatest lawyer and statesman of this or, perhaps, any other

country, having presided in this Court near twenty years without a single decree having been reversed, either in the whole or any part of it; an infallibility which, in no other instance, was ever the lot of humanity." *

The Earl of Chesterfield thus mediates between them, and pronounces sentence for posterity: —

Lord Chesterfield.

" Lord Hardwicke was perhaps the greatest magistrate this country ever had. He presided in the Court of Chancery above twenty years †, and in all that time none of his decrees were ever reversed, or the justness of them questioned. Though avarice was his ruling passion, he was never in the least suspected of any kind of corruption — a rare and meritorious instance of virtue and self-denial under the influence of such a craving, insatiable, and increasing passion. He was an agreeable, eloquent speaker in parliament, but not without some little tincture of the pleader. He was a cheerful, instructive companion, humane in his nature, decent in his manners, unstained by any vice (avarice excepted) — a very great magistrate, but by no means a great minister."

His marriage happy.

His marriage with the young widow turned out most auspiciously. They continued to old age tenderly attached to each other. She contributed not only to his happiness, but to his greatness. " She often humorously laid claim (as she had good right to do) to so much of the merit of Lord Hardwicke's being a good Chancellor, in that his thoughts and attention were never taken from the business of the Court by the private concerns of his family, — the care of which, the management of his money matters, the settling all accounts with stewards and others, and above all, the education of his children, had been wholly her department and concern, without any interposition of his, farther than implicit acquiescence and entire approbation." ‡ She was supposed to be very stingy, and foolish stories were circulated to annoy her; but "she would often smile at hearing of *the cold chine being turned and found bare,* of the *potted sawdust to represent lamprey,* and *of the want of Dr.*

Character of Lady Hardwicke.

* Observations on Statutes, 325.

† Not quite correct.

‡ Cooksey, 34.; Ib. 40.

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*Mead's kitchen** *to be added to Powis House,* and only observe that, uncertain as was the time of Lord Chancellor's dining, and the company that would attend him; yet if it should happen that he brought with him an ambassador or person of the highest rank, he never found a dinner or supper to be ashamed of."

Absurd charge against her.

We may judge of the malicious turn given to her domestic arrangements, however deserving of praise, by the charge against her of stealing the purse in which the Great Seal was kept, to make a counterpane. The truth is, that this purse, highly decorated with the royal arms and other devices,— by ancient custom, is annually renewed, and is the perquisite of the Lord Chancellor for the time being, if he chooses to claim it. Lady Hardwicke, availing herself of this custom, caused the purse, with its decorations, to be put as embroidery on a large piece of rich crimson velvet, corresponding to the height of one of the state rooms at Wimple. These purses, just twenty in number, complete the hangings of the room, and the curtains of a bed, singularly magnificent. She, therefore, in reality, only prepared a characteristic and proud heir-loom to be handed down to commemorate the founder of the family.†

His children.

Lord and Lady Hardwicke had seven children, five sons and two daughters, who all grew up, and flourished. Philip, the eldest son, married Jemima Campbell Marchioness Grey, only daughter of John Earl of Breadalbane, and granddaughter and heiress of the Duke of Kent, who obtained for her a remainder of his marquisate. This Philip, who became the second Earl of Hardwicke, was a man of letters, and an excellent politician, continuing always a steady adherent of the Rockingham party. Of the accomplished and high-spirited Charles, the second son, it will be my duty to give a separate memoir, as he held the Great Seal of England. Joseph, the third son, being for many years ambassador to the States General, was raised to the

* "Oft would he go when summer suns prevail,
To taste the coolness of his kitchen's gale."

† Cooksey, 39.

peerage by the title of Lord Dover. John, the fourth son was not inferior in learning or abilities to any of his brothers, but preferred a private station with the enjoyment of several lucrative sinecures conferred upon him by his father. James, the youngest son, was made Bishop of Ely. The eldest daughter, having become Lady Anson, and the youngest Lady Heathcote, are said to have been distinguished ornaments of the court of George II. — The Chancellor is now worthily represented by his great-grandson, the present gallant Earl of Hardwicke.*

His present representative.

* Grandeur of the law, p. 66.

# CHAPTER CXXXVIII.

LIFE OF LORD CHANCELLOR NORTHINGTON FROM HIS BIRTH TILL HE RECEIVED THE GREAT SEAL.

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Glance at character and history of Lord Northington.

MY next Chancellor I cannot place in the first rank as a lawyer or a statesman; but he is not despicable in either capacity, and he is a memorable personage in the history of the Great Seal, as he held it nine years, in two reigns *, and during the whole of four administrations,—the last of which he overturned. †

His family.

Robert Henley (afterwards Lord Keeper, Lord Chancellor, Baron Henley, and Earl of Northington), was descended from the ancient family of "Henley of that ilk," in Somersetshire. ‡ In 1660, the elder branch was advanced to the dignity of the baronetage. Before then, a cadet following the law as a profession, had filled the lucrative situation of "Master of the Court of King's Bench on the Plea Side,"—from the profits of which he left to his family a landed estate of 3000*l.* a year. He acquired the Grange in Hampshire, which, when afterwards in the possession of his descendant, Horace Walpole speaks of with so much admiration. The house was built for the worthy taxer of costs, when he had become Sir Robert Henley, Knight, by Inigo Jones—presenting a hall and staircase which the world was called upon to admire as "beautiful models of the purest and most classic antiquity." §

* George II. George III.

† Mr. Pitt's, Lord Bute's, Duke of Bedford's, Marquis of Rockingham's.

‡ *i. e.* Taking their surname from the name of a territorial possession belonging to them, when surnames first began. Our surnames are chiefly derived from this origin, or from personal peculiarities,—from trades and employments, or from the Christian name of the father or mother. Of these, the first class is the most aristocratic, denoting a descent from an ancient baron, or, at least, the Lord of a manor.

§ Lord Henley says, "The critic, however, was, I suspect, misled by the respect due to the name of Jones. The current testimony of all who remember it as it then was, represents it, notwithstanding the merit of individual parts, as, upon the whole, a heavy and gloomy structure, utterly unworthy of the great ar-

His son Robert sat in parliament for the borough of Andover, without acquiring much distinction; but the name of his grandson, Anthony, one of the politest and most accomplished men of his day, frequently occurs in the memoirs and correspondence of the reign of Queen Anne.

His father.

Having distinguished himself at Oxford by an early relish for literature, and the great refinement and elegance of his manners, on removing to London he was admitted into the society and friendship of the first wits of the time. He was intimate with the Earls of Dorset and Sunderland, and with Swift, Pope, and Arbuthnot. "It was thought strange," says his biographer, "as every one knew what a secret influence he had on affairs in King William's Court, that he who had a genius for any thing great as well as any thing gay, did not rise in the state, where he would have shone as a politician no less than he did at Will's and Tom's as a wit. But the Muses and pleasantry had engaged him. He had something of the character of Tibullus, and, except his extravagance, was possessed of all his other qualities — his indolence, his gallantry, his wit, his humanity, his generosity, his learning, his taste for letters. There was hardly a contemporary author that did not experience his bounty." * Garth's "Dispensary" was dedicated to him, and some even ascribed to him the authorship of that poem. † He certainly was a contributor to the "Tatler." He first served in the House of Commons for Andover, and afterwards till his death for Weymouth and Melcombe Regis. He was a strong Whig, and on one occasion

chitect."— Life of Lord Northington, p. 5. It is related, that Lord Chancellor Northington, expecting a visit here from George III. and Queen Charlotte, cautioned his daughters against telling their Majesties that the house had been built by "INDIGO JONES."

The Grange was sold by the second Earl of Northington to Mr. Drummond, and is now the property of Lord Ashburton. But the house has been rebuilt in a most sumptuous style, and not a vestige of the original structure remains.

* Memoirs of Persons who died in 1711. 8vo. 1712.

† There is not much resemblance of character between the father and the son, if there was any truth in the language of this Dedication: "A man of your character can no more prevent a dedication than he would encourage one; for merit, like *a virgin's blushes*, is still most discovered when it labours most to be concealed. Rather than violate your *modesty*, I must be wanting to your other virtues; and to gratify one good quality, do wrong to a thousand." The Chancellor, through life, was more remarkable for his *brass*, than for his *blushes*.

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came prominently forward as mover of the address to Queen Anne, "that she would confer some dignity in the church upon Hoadly as a reward for asserting and vindicating the principles of the Revolution." This made him so odious to the Tory administration, which bore sway for the last four years of Anne's reign, that they made a great effort to deprive him of his seat, first at the election, and then on a petition, but without effect. He married Mary, daughter and coheiress of the Honourable Peregrine Bertie, second son of Montague Earl of Lindsey, with whom he received a considerable fortune. They had three sons. Anthony, the eldest, who inherited and for time enjoyed the family estate; Birtie, the youngest, who went into the church, and ROBERT, the subject of this memoir, who was born in the year 1708.*

His birth.

His education at Westminster.

I find no anecdotes of the future Chancellor's childhood, or omens to foretell his coming greatness. Indeed, he was pretty well stricken in years before either he himself or others imagined that there would be any thing to distinguish him from the ordinary race of mortals who form the chorus in the play of life—without ever fretting and strutting a single hour upon the stage. He was educated at Westminster school. There he formed an acquaintance with the great Lord Mansfield, to whom he was junior about four years; but in consequence of the Chief Justice having spent some time in travelling on the Continent, after he had quitted Christ Church, there was only the difference of a few months in their standing at the bar, Murray being the senior by three terms. Another distinguished school-fellow of theirs was Sir Thomas Clarke, afterwards Master of the Rolls, so that the three highest stations in the law were occupied at the same moment by three Westminster men. Murray and Clarke were both King's scholars; Henley was an oppidan. I have no means of knowing what acquisitions of learning he made, or what disposition he exhibited till he was transferred to St. John's College,

At Christ Church.

* The most distinguished man of the name, before our hero, was orator Henley, celebrated by Pope. He claimed to be related to the ancient race I have been mentioning; and they would probably have admitted the claim, if he had gained his notoriety as a General or a Judge.

Oxford. There he was entered, and began to reside, on the 19th of November, 1724, in his seventeenth year.

His love of port wine.

At this time Alma Mater still lay "dissolved in port," and young Henley, as soon as he was matriculated, piously contracted a great passion for that generous liquor — which adhered to him through life, and made him despise claret and all other thin potations.* He did not altogether neglect classical learning, but, without being thought at all remarkably deficient in mathematics, he only knew the difference, in general appearance, between a triangle, a circle, and a square, remaining ignorant of the most common properties of those figures. He chiefly delighted in humour and buffoonery, laying the foundation of that extraordinary collection of droll, and not very delicate, stories which gave brilliancy to his subsequent career. On the 3d of November, 1727, he was elected a fellow of All Souls, a distinction for which he was supposed to be chiefly indebted to his powers of amusement. He did not take his degree of Master of Arts till the 5th of July, 1733.

Entered of the Inner Temple.

But on the 1st of February, 1728, he was entered of the Inner Temple, and was supposed to begin his juridical studies. We are told that Murray, when he first came to town, "drank champagne with the wits," and that his classic tastes and literary attainments led him to prefer the society of scholars and men of genius to that of his professional brethren. Henley was devoted to the juice of a more powerful vintage, which, in the society he haunted, flowed in very copious streams. Though not devoid of scholarship, and

* With what delight would he have perused the panegyric upon his favourite beverage, to be found in a late article in the "Quarterly Review," on the two celebrated brothers, "Lords Stowell and Eldon." "He and Lord Eldon perfectly agreed in one great taste — if a noble thirst should be called by so finical a name — an attachment to port wine, strong almost as that to Constitution and Crown; and, indeed, a modification of the same sentiment. It is the proper beverage of a great lawyer — that, by the strength of which Blackstone wrote his Commentaries, and Sir William Grant modulated his judgments, and Lord Eldon repaired the ravages of study, and withstood the shocks of party and of time." May I add — "that, by which Serjeant Talfourd was enabled to prepare a great argument for the Court of Common Pleas; and was inspired to write the immortal tragedy of Ion." From the fervid eloquence and poetical exaggeration of the passage, he, I suspect it is, who adds: "This sustaining, tranquillising power, is the true cement of various labours, and prompter of great thoughts!"— Q. R., No. cxlix. p. 52.

possessing a rich fund of anecdote of a peculiar sort, his conversation was too jovial and boisterous to be endured in the circles where the accomplished Murray shone. Having attended the Courts in the morning, and read a little black-letter law on his return, he gave himself to "pleasure, in the way he liked it," for the rest of the day, with a few thirsty "All Souls" friends, or some congenial spirits of the Temple. The truth is, that hard drinking was at that time the ruling vice and bane of society, and Henley was not, at his early period of life, fortunate enough to escape the general contagion. He afterwards so far reformed as not to allow his love of wine very seriously to interfere with the pressing business of life, but many a severe fit of the gout was the result of his youthful indulgences. When suffering from the effects of this disease, he was once heard, in the House of Lords, to mutter, after several hobbling and painful walks, with the purse in his hand, between the woolsack and the bar, "If I had only known that these legs were one day to carry a Lord Chancellor, I'd have taken better care of them when I was a lad."

His legal studies.

However, he was a very shrewd fellow; he had an exceedingly good head for law, and from occasional starts of application, he made much more progress than dull plodders who pore constantly over the "Year Books." Although he never could be called a scientific lawyer, he acquired a competent practical knowledge of his profession, and could get up very reputably all the learning on any particular question with which he had to deal. He was called to the bar, by the Society of the Inner Temple, on the 23d of June, 1732.*

He is called to the bar.

Practises in the King's Bench, and goes the Western Circuit.

He began with taking a seat in the back row of the Court of King's Bench, where he had long little employment but to take notes, to crack jokes, and to arrange supper parties. From family connections he chose the Western Circuit, of which he afterwards became the leader, but there his progress was very slow.

* He was afterwards admitted of Lincoln's Inn (1745), but this was only to qualify him to hold chambers. The Inner Temple was always his true Inn of Court; and he became a bencher of that society on being made a King's counsel in 1751.

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He is challenged to fight a duel by a Quaker.

He had at first a few briefs at Winchester. He showed himself very handy in business, and displayed great skill in cross-examining witnesses, although he was sometimes supposed to take unjustifiable liberties with them. Bishop Newton, who was very intimate with him, as they had been at Westminster together, relates an anecdote of his having cross-examined a broad-brimmed saint, named ZEPHANIAH REEVE, at Bristol, with so much raillery and effect, that the Quaker, forgetting the pacific tenets of his sect, actually sent him a message, insisting on honourable satisfaction, or an apology. Mr. Henley was by no means wanting in courage, but, sensible that he had exceeded the bounds of professional licence, and anxious to escape the ridicule of going into the field with such an antagonist, very readily adopted the latter alternative. Many years afterwards, when he was Lord Chancellor, having had a couple of pipes of Madeira consigned to him at Bristol, he remembered ZEPHANIAH, and employed him to pay the freight and duty upon them, and forward them to the Grange. "The winter following," says the Bishop, "when the Quaker was in town, he dined at the Chancellor's with a large party of nobility and members of the House of Commons. After dinner the Chancellor related the whole story of his first acquaintance with his friend Reeve, and of every particular that had passed between them, with great good-humour and pleasantry, and to the no little diversion of the company."

His gaieties at Bath.

In those days the smart junior barristers used to pass their vacations at Bath, a custom not entirely left off when I first knew the profession. Young Councillor Henley was there, the gayest of the gay, and distinguished himself among the ladies in the pump-room in the morning, as well as among the topers in the tavern at night. Here he formed a rather romantic attachment, of which, from his rattling, reckless manner, and his being a professed votary of the god, "ever fair and ever young," he was supposed to be incapable. There was at Bath, for the benefit of the waters, a very young girl of exquisite beauty, who, from illness, had lost the use of her limbs so completely that she was only able to appear in public wheeled about in a chair. She was the daughter and co-

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He is in love.

heiress of Sir John Husband, of Ipsley, in Warwickshire, who, though not "of that ilk," was the last male of a time-honoured race, whom Dugdale states to have been Lords of that manor in lineal succession from the Conquest. Henley, struck by the charms of her face, contrived to be introduced to her, when he was still more fascinated by her conversation. His admiration soon ripened into a warm and tender attachment, which he had reason to hope was reciprocal. But it seemed as if he had fallen in love with a *Peri*, and that he must for ever be contented with sighing and worshipping at her shrine—when suddenly the waters produced so effectual and complete a cure, that Miss Husband was enabled to comply with the custom of the place by hanging up her votive crutches to the nymph of the spring, and to dance the "minuet de la cour" at the lower rooms with her lover. Soon after, with the full consent of her family, she gave her hand to the suitor who had so sedulously attended her. To the end of a long life she continued to enjoy a most perfect state of health, and their affection remaining unabated, she gave him that first of human blessings, a serene and happy home. The marriage ceremony was performed by his school-fellow, Bishop Newton,—of which that prelate in his Memoirs, has the following agreeable recollection: "It happened that he and his lady were married by Mr. Newton, at the chapel in South Audley Street, at which time they were a very handsome couple. Several years afterwards Mr. Newton went one day into Lincon's Inn Hall while the Court was sitting, to speak with Mr. Murray on some business,—Mr. Henley being next to him, and reading a brief. When he had despatched his business, and was coming away, 'What,' said Mr. Murray to Henley, 'have you forgotten your old friend Newton, or have you never forgiven the great injury that he did you?' Upon which he started as out of a dream, and was wonderfully gracious to his old school-fellow, acknowledging that he owed all his happiness in life to him. And, indeed, he had good reason to be happy in his wife and family."*

His marriage.

A.D. 1743.

* Newt. Mem.

His narrow circumstances.

His business not being yet very lucrative, and her father surviving for some years, the newly married couple started with but slender means. Their first residence was a small house in Great James Street, Bedford Row, where they lived for three years very quietly, but very contentedly—in a style congenial to the simplicity of their tastes. After he became Lord Chancellor and Lord Lieutenant for Hampshire, both he and is wife would often look back with pleasing recollection from the Grange and Grosvenor Square to the freedom and frugality of their early establishment near Bedford Row, "where a leg of mutton lasted them three days, —the first day hot,—the second day cold,—and the third day hashed."

Death of his elder brother.

His farther rise was now in great peril by the death of his elder brother Anthony without issue, whereby the family estates in Hampshire and Dorsetshire descended upon him, with the fine house on the south side of Lincoln's Inn Fields, now occupied by the College of Surgeons. Fortunately the property was found much incumbered with debt, or the future Chancellor and Earl would have sunk into a country Squire, perhaps distinguished by filling the chair at sessions —Petty and Quarter. The good management of a few years cleared off, or greatly lightened, the incumbrances, but by this time objects of high ambition had presented themselves to him, and the notion of rural retirement had lost all its attractions.

He is elected Recorder of Bath, and M.P. for that city.

After his marriage, Henley continued to go frequently to Bath, carrying his wife along with him. He now led comparatively a sober life, but occasionally he would indulge in his old convivial habits, and by his toasts and his stories, and his very agreeable manners, he ingratiated himself so much with the Mayor and Common Council, forming a very small corporation,—with the right of returning members to parliament exclusively vested in them,—that they made him their Recorder, and agreed to elect him at the next vacancy one of their representatives, being swayed, perhaps, not merely by his personal good qualities, but the prospect of his being now able to show his gratitude for their kindness to him. Accordingly, on the dissolution of parliament, which took place in the summer of the year 1747, he was elected a representa-

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tive for Bath along with Field Marshal Wade, who had gained such notoriety during the recent rebellion.*

He attaches himself to Leicester House.

He became a warm supporter of the party of Frederick Prince of Wales, designated by the appellation of "*Leicester House*," to which several eminent lawyers were already attached,—particularly Sir Thomas Booth, Chancellor of the Duchy, Dr. (afterwards Sir George) Lee, the eminent civilian, and the Honourable Hume Campbell, afterwards Earl of Marchmont, celebrated as the friend of Pope,—a set who, struggling for a share of the favours of the Crown during the present reign, confidently expected to monopolize the whole in the next.

No trace of his speeches in the House of Commons.

It is with deep disappointment that, turning to the parliamentary records to ascertain when the new member for Bath made his maiden speech, and by what steps he acquired such a position in the House of Commons as to be appointed Attorney General to the Crown, and afterwards to be intrusted with the Great Seal,—I cannot discover, during the ten years he sat in that assembly, his name once mentioned or referred to.† It appears, however, from Horace Walpole and contemporary memoir-writers, that he was a frequent and active debater. He seems to have been anxious to come forward, as often as he thought he could be of any service to his party, without aiming at oratorical distinction. He was noted as a very steady and consistent politician, so that he did not derive the same benefit from the oblivion of his harangues which might have been enjoyed by some of his successors, who, in the discussion of important questions, have spoken with equal ability on both sides.

Death of Frederick Prince of Wales.

In 1751 a heavy blow fell upon Leicester House in the sudden death of Frederick. Hume Campbell, and others, took the opportunity of going over to St. James's, but Henley adhered to the Princess Dowager, and, although he thereby rendered himself obnoxious to George II., he secured his ultimate elevation. Frederick's eldest son (afterwards George III.) being created Prince of Wales, and his establishment being formed, Henley became Solicitor General

* 14 Parl. Hist. 77.

† See Parl. Hist. xiv. xv.

to his Royal Highness, and at the same time he was appointed a King's counsel. In respect to this last promotion, there being a salary of forty pounds a year annexed to the office, he vacated his seat in the House of Commons; but he was re-elected without opposition.*

Henley Solicitor General to George Prince of Wales, afterwards Geo. III.

Henley's silk gown had great success. He not only got into the decided lead on the Western Circuit, but was now in the first business in the Court of King's Bench, both in banc and at nisi prius. He occasionally went into the Court of Chancery in important causes, but, according to the general usage of the eighteenth century, he did not regularly practise there till he became a law officer of the Crown.

His success with a silk gown.

So things went on till the year 1756, when Murray insisting on leaving the House of Commons, and being appointed Chief Justice of the King's Bench, the Duke of Newcastle resigned, and a new administration was formed. Leicester House was a party to this arrangement, and Henley succeeded Murray in the office of Attorney General, without having previously filled the office of Solicitor General to his Majesty.† Now he left the circuit, and transferred himself to the Court of Chancery, where, from the good foundation he had laid in conducting common-law proceedings, from his natural shrewdness and handiness, and from the influence his station was supposed to give him over the Lords Commissioners who held the Great Seal, in the room of Lord Hardwicke, he immediately came into full employment, and was able to cope with the old Chancery counsel, notwithstanding the advantage they enjoyed in being able to make broad assertions as to the settled practice of the Court, and to cite unpublished decisions of the late Lord Chancellor, expressly in point.

He is made Attorney General to the King.

Nov. 1756.

He practises in Court of Chancery.

He was soon much disturbed by the dismissal of Mr. Pitt and Mr. Legge, and the prospect of himself being turned

April, 1757.

* 14 Parl. Hist. 77. The inconvenience of vacating a seat in parliament by a silk gown was afterwards obviated by "patents of precedence," or by declaring that the office was to be held "without fee or reward."

† Sir Richard Lloyd, the Solicitor under the Duke of Newcastle, was dismissed, but was afterwards made a Baron of the Exchequer. Henley had for his colleague as Solicitor the famous Charles Yorke, whose story we shall by and by have to tell.

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Political changes before formation of Mr. Pitt's ministry.

adrift by the total dissolution of the ministry. By and bye he was a little comforted by finding that, with the concurrence of Leicester House, negotiations were opened for a coalition between different parties, — but soon alarmed by the report that Lord Hardwicke, who he thought had a particular spite against him, was to resume the office of Chancellor, — and again re-assured by the intelligence that Mr. Pitt peremptorily objected to this arrangement. Next followed a confident statement, which was not very disagreeable to him, that Sir Eardley Wilmot, the junior Lord Commissioner, was to be Chancellor; but this was contradicted by that worthy person, who, in a letter to his brother, which was handed about, said, "the acting junior of the commission was a spectre I started at, but the sustaining the office alone I must and will refuse at all events; I will not give up my peace of mind to any earthly consideration whatever: bread and water are nectar and ambrosia compared with the supremacy of a court of justice." * One day Henley was much excited by hearing that the Great Seal had been offered to Lord Mansfield, and by anticipating that he might accept it, so as to leave the Chief Justiceship of the King's Bench to the Attorney General. Then came certain intelligence that Lord Mansfield, having refused the Great Seal, it had been tendered to Sir John Willes, the Chief Justice of the Common Pleas, who was willing enough to accept it, but was standing out for a peerage, which the King objected to, although the last six Chancellors had been Peers, and there had been a general belief that a gagged Keeper or Chancellor would not again be placed on the woolsack.

A.D. 1757.

Henley had not, down to this time, entertained the most distant notion of the Great Seal being offered to himself, as he had only very recently been made Attorney General from practising in a common law Court, and he felt that he had not sufficient political consequence to aspire to such a dignity. But (as sometimes happens) his mediocrity was the real cause of his elevation. Mr. Pitt knew enough of him from his appearances in the House of Commons to be

* In fact, the offer was not made to Wilmot on this occasion, although it was, and refused (as we shall see), twice over, in the year 1770.

sure that he could not be formidable in the cabinet,—though considered a fair lawyer, qualified decently to get through the duties of a judicial office; — and under colour of paying a compliment to Leicester House, and effectually to bar the return of that old Volpone, Lord Hardwicke, he proposed, with seeming disinterestedness, that the Attorney General, though not politically connected with him, should be the man. Leicester House was rejoiced, and the Duke of Newcastle did not object, being somewhat indifferent about the appointment since he could not procure it for Lord Hardwicke.

Henley receives the Great Seal as Lord Keeper.

The King was obliged to yield any point on which the three parties were agreed; but as Henley, from his connection with Frederick and with the present Prince of Wales was personally disagreeable to him, he stipulated that the Great Seal must now be taken without a peerage. The offer being made to Henley with this condition, he instantly and joyously accepted it, not even stipulating for a pension, or the reversion of a Tellership to his son, which had been usual on such occasions.*

His interview with Chief Justice Willes.

He then thought it would be decent to inform the Chief Justice of the Common Pleas of what had happened. — Their interview on this occasion is the subject of one of the stock-stories of Westminster Hall. Thus it used to be related with characteristic humour by the late Lord Ellenborough: — "Immediately after Willes had refused the Seals, Henley called upon him at his villa, and found him walking in the garden, highly indignant at the affront which he considered that he had received in an offer so inadequate to his pretensions. After entering into some detail of his grievances, he concluded by asking, 'whether any man of spirit could, under such circumstances, have taken the Seals;' adding, '*Would you, Mr. Attorney, have done so?*' Henley, thus appealed to, gravely said, '*Why, my Lord, I am afraid it is rather too late*

* Horace Walpole says, contrary to truth, that he demanded and obtained both: "Willes proposed to be bribed by a peerage, to be at the head of his profession; but could not obtain it. Henley, however, who saw it was the mode of the times to be paid by one favour for receiving another, demanded a Tellership of the Exchequer for his son; which was granted, with a pension of 1.500*l.* a year till it should drop."—Walp. Mem., Geo. II. vol. ii. 226. These jobs were afterwards done for him.

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*to enter into such a discussion, as I have now the honour of waiting upon your Lordship to inform you that I have actually accepted them."**

He was sworn in as Lord Keeper at a Council held on the 30th of June, 1757, and on the first day of Michaelmas term following, after a grand procession to Westminster Hall, he was duly installed in the Court of Chancery.†

* Henley's Life of Northington, 34.— Horace Walpole attributed Henley's promotion, on this occasion, to Mr. Pitt's great desire to make Pratt (afterwards Lord Camden) Attorney General: "One of the most extraordinary parts of the new system is the advancement of Sir Robert Henley. He was made Attorney General by Mr. Fox at the end of last year, and made as bad a figure as might be: Mr. Pitt, insisting upon an Attorney General of his own, Sir Robert Henley is made Lord Keeper!"—*Horace Walpole to Sir H. Mann*, 3d July, 1757. This possibly might be an ingredient in Mr. Pitt's determination; but, I conceive, that his chief motive was to exclude Lord Hardwicke by a man who could not be dangerous.

† 30th June, 1757.—"The Lords Commissioners, for the custody of the Great Seal of Great Britain, having delivered the said Great Seal to the King at his Palace at Kensington, on Thursday, the 30th day of June, 1757, his Majesty, about one o'clock the same day, delivered it to Sir Robert Henley, knight, his Attorney General, with the title of Lord Keeper, who was then sworn into the said office before his Majesty in council. His Lordship sat at Lincoln's Inn Hall during the Seals after Trinity Term, and the Seals before Michaelmas Term, 1757. And on Monday, the 7th day of November, being the first day of Michaelmas Term, he went in state from his house in Lincoln's Inn Fields to Westminster Hall, accompanied by the Earl Granville, Lord President of the Council, the Duke of Rutland, Lord Steward of the Household, the Duke of Newcastle, First Lord of the Treasury, the Earl of Hardwicke, the Lord Anson, First Lord of the Admiralty, the Lord Vis. Dupplin, Sir Thomas Robinson, Knight of the Bath, the Master of the Rolls, the Judges, King's Serjeants, King's Counsel, and several other persons. The Lords accompanied him into the Court of Chancery, where (before he entered upon business), in their presence, he took the oaths of allegiance and supremacy, and the oath of Lord Keeper of the Great Seal of Great Britain, the Master of the Rolls holding the book, and the Deputy Clerk of the Crown reading the said oaths; which, being done, the Attorney General moved that it might be recorded, and it was ordered accordingly. Then the Lords departed, leaving the Lord Keeper in Court."—Roll, 1726—1757.

# CHAPTER CXXXIX.

## CONTINUATION OF THE LIFE OF LORD NORTHINGTON TILL THE DEATH OF GEORGE II.

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His political insignificance.

THE new Lord Keeper had nothing to divert him from his judicial duties. His political functions were long in a state of abeyance. He had a pretty strong suspicion in his own mind that he was appointed because he was likely to be quiet in the cabinet, and he did not seek to interfere. Formal meetings of it were occasionally called which he attended, but he was as little consulted by Pitt about the raising of Highland regiments, or the conduct of the war, as the Six Clerks or the Masters in Chancery. If there had been any debates in parliament, he was precluded from taking part in them; but there were none,—all opposition having vanished for several years,—and neither his time nor his attention was in any degree occupied by the sittings of the House of Lords, which generally lasted only while prayers were read, and the question was put "that this House do now adjourn." If a motion was introduced by a speech, it was to vote a monument to a hero who had fallen in battle, or thanks to his surviving comrades, and the Lord Keeper, as Speaker, had only to transmit these thanks, and to read from the woolsack the answers which he received.

Lord Keeper Henley as an Equity Judge.

Let us follow him then into the Court of Chancery, where his duties were arduous. Here he acquitted himself respectably; but he was contented if he could continue to fill the office, escaping censure,—without aiming at great reputation. He did not follow the example of the fathers of Equity, Lord Nottingham and Lord Hardwicke, who, on coming to the Great Seal, notwithstanding much previous familiarity with the business of the Court in which they were called upon to preside, entered upon a laborious and systematic course of

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inquiry and of study to qualify themselves for their new situation, that they might discharge its duties in a manner satisfactory to their own minds, and in the hope of being permanently applauded as consummate magistrates. He was satisfied with the stores of professional learning (not inconsiderable) which he had laid in, and with bestowing a reasonable share of pains on the different cases which successively came before him. He always took full notes of the arguments of counsel, and he investigated important questions with much research. Sometimes he wrote out elaborate judgments in his own hand. On the bench he was universally allowed to be impartial and upright. *Laudatus a laudato*, he was pronounced by Lord Eldon to have been "a great lawyer, and very firm in delivering his opinion." He attended Court in the morning with alacrity and cheerfulness, but the evening sittings were a great annoyance to him, from their interference with his convivial pleasures, — and he at last succeeded in abolishing them. With the able assistance of Sir Thomas Clarke, the Master of the Rolls, he contrived pretty well to keep down arrears, although complaints of delay were much louder than in the time of Lord Hardwicke, and the Court was by no means in such good odour with the public. The consequence was that, in all important cases, there was an appeal to the House of Lords. The state of things there was very different from what it had been for twenty years past. The Judge who had pronounced the decree appealed from, had now neither vote nor voice; he could not even ask a question of the counsel at the bar; and a motion being made for a reversal, he could only say, "*the Contents have it.*" Ex-chancellor Lord Hardwicke always attended, and Lord Mansfield very frequently. It would be wrong to say that they had any inclination to reverse, but they bore no particular good-will to the Lord Keeper, who belonged to a different section in politics from them, and whose authority on questions of Equity they did not consider very high. However, when he acquired a little more experience, and when, being raised to the Peerage, he could freely defend his opinions, he stood higher as a Judge, and appeals from him

Hardship upon him when his decrees were reversed.

became more rare. It is said that, after all, "only six of his decrees were reversed or materially altered." *

His judgments reported by his grandson, Lord Henley.

For a long interval after his death, the proceedings of the Court of Chancery in his time had been very insufficiently reported, and when I first entered the profession there were only traditionary recollections of his judgments as of his jests †; but a few years ago the pious labours of his grandson, my most amiable and accomplished friend, the late Lord Henley, from the Chancellor's own MSS., and from notes taken by several eminent counsel who had practised under him, produced two volumes of his decisions, which "greatly raised his reputation with those best qualified to estimate it." These show him to have been very bold and very vigorous, and generally very sound, but they are certainly wanting in the depth of thought, in the logical precision, and in the extreme caution which distinguished the decisions of his predecessor.

Decree setting aside a deed of gift obtained by religious imposture.

I shall give, as a favourable and characteristic specimen of his manner, the judgment delivered by him in the case of Norton v. Relly ‡, where the bill was filed by a maiden lady residing at Leeds, against a methodist preacher, and others, trustees named in a deed of gift executed by her to him,— suggesting that it had been obtained by undue means,—and praying that it might be delivered up to be cancelled. The "*Tartuffe*" had introduced himself to her notice by a letter, in which he said, that "although unknown to her in the flesh, from the report he had of her he made bold to address her as a fellow member of that consecrated body wherein the fulness of the Godhead dwelt, and that he was coming among them at Leeds for a little time to preach the kingdom of God," subscribing himself "her affectionate brother in the flesh." She was prevailed upon to invite him to her house, to accompany him to London, to give him large sums of ready money, and to grant him an annuity charged on her real estates in Yorkshire. — *Lord Chancellor Henley.* "This cause, as it has been very truly observed, is the first of the kind that ever came before the Court, and, I may add, before any

* Life, 56. † Ambler alone had noticed him. ‡ Eden's Rep. ii. 286.

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Court of judicature in this kingdom. Matters of religion are happily very rarely the subject of dispute in Courts of Law or Equity." [After expressing his respect for dissenters, he proceeds:] "But very wide is the difference between dissenters and fanatics, whose canting, and whose doctrines, have no other tendency than to plunge their deluded votaries into the very abyss of bigotry, despair, and enthusiasm. And though, even against those unhappy and false pastors, I would not wish the spirit of persecution to go forth, yet are not these men to be discountenanced and discouraged whenever they are properly brought before Courts of justice?—men who, in the apostle's language, *go about and creep into people's dwellings, deluding weak women*—men who go about and diffuse their rant and warm enthusiastic notions, to the destruction not only of the temporal concerns of many of the subjects of this realm, but to the endangering their eternal welfare. And shall it be said that this Court cannot relieve against the glaring impositions of these men? That it cannot relieve the weak and unwary, especially when the impositions are exercised on those of the weaker sex? This Court is the guardian and protector of the weak and helpless of every denomination, and the punisher of fraud and imposition in every degree. Here is a man, nobody knows who or what he is; his own counsel have taken much pains modestly to tell me what he is not; and depositions have been read to show that he is not a Methodist. What is that to me? But I could easily have told them what by the proofs in this cause and his own letters he appears to be—a subtle sectary who preys upon his deluded hearers, and robs them under the mask of religion. Shall it be said in his excuse that this lady was as great an enthusiast as himself? It is true she was far gone—but not far enough for his purpose. Thus he addressed her, '*Your former pastor has, I hear, excommunicated you, but put yourself in my congregation wherein dwells the fulness of God.*' How scandalous, how blasphemous is this! In coming from London to Leeds he will not come in a stage coach, but must have a post chaise, and live elegantly on the road at the expence of the plaintiff, who gave him 50*l.* in money, besides presents of liquor—so that his

own hot imagination was further heated with the spirit of brandy. He secured a part of her fortune by lighting up in her breast the flame of enthusiasm, and undoubtedly he hoped in due time to secure the whole by kindling another flame of which the female breast is so susceptible; for the invariable style of his letters is '*all is to be completed by love and union.*' Let it not be told in the streets of London that this preaching sectary is only defending his just rights. I repeat, let not such men be persecuted, but many of them deserve to be represented in puppet shows. I have considered this cause not merely as a private matter, but of public concernment and utility. Bigotry and enthusiasm have spread their baneful influence amongst us far and wide, and the unhappy objects of the contagion almost daily increase. Of this, not only Bedlam, but most of the private mad-houses, are melancholy and striking proofs. Let it be decreed that the defendant execute a release to the plaintiff of this annuity, and deliver up the deed for securing it. I cannot conclude without observing that one of his counsel, with some ingenuity, tried to shelter him under the denomination of '*an independent preacher.*' I have tried in this decree to spoil his '*independency.*'"

His famous decision in Burgess v. Wheate.

The finest judgment Henley ever delivered is supposed to have been in the case of *Burgess* v. *Wheate**, where the question was "whether the Crown be entitled by escheat to a trust estate upon the *cestui que trust* (or person beneficially interested) dying without issue?" He called in the assistance of Lord Mansfield and Sir Thomas Clarke, who, differing, he sided with the latter against the escheat, so as to leave the estate to the trustee discharged of every trust,—and his decision has given the rule ever since. But it proceeds on reasonings too technical and abstruse to be introduced here.

Perpetuities.

He likewise obtained great credit for the rule he laid down, respecting *perpetuities*, in the case of *Duke of Marlborough* v. *Earl of Godolphin*. The hero of Blenheim, endeavouring to retain after death a power beyond the limits allowed by law, devised his great estates to trustees for the

* Eden's Rep. i. 177.

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benefit of several existing persons successively for life, with remainder to their sons in strict settlement; but directed his trustees, on the birth of each son of each tenant for life, to revoke the uses before limited to their respective sons in tail male, and to limit the estates to such sons for their lives.*—*Lord Keeper.* "It is agreed on all hands that this clause is new, and that, although it has been privately fostered by a particular family, from whom it issued, it never has been adopted by conveyancers. In substance, the testator makes his great-grandson, the present Duke, who was at the date of the will unborn, tenant for life, with a limitation to his sons as purchasers in tail. It is agreed that this could not be done directly by words of limitation, because, though by the rules of law an estate may be limited, by way of contingent remainder, to a person not *in esse* for life, or as an inheritance, yet a remainder to the issue of such contingent remainder-man, as a purchaser, is a limitation unheard of in law, nor ever attempted, as far as I have been able to discover. Technical reasons, upheld by old repute and grown reverend by length of years, bear great weight and authority, but a new technical reason appears with as little dignity as an usurper just seated in his chair of state. The common law seemed wisely to consider that real property ought not to be put out of commerce, and should be left free to answer the exigencies of the possessors and their families, and, therefore, would not admit perpetuities by way of entails. The dissipation of young heirs, the splendour of great families, the propriety of annexing sufficient possessions to support the dignities obtained by illustrious persons, afford specious arguments for perpetuating estates by entails; but, in a commercial country, to damp the spirit of industry, and to take away one of its greatest incentives, the power of honourably investing its acquisitions, would produce all the inconveniences against which we have been guarding by fines and recoveries and other devices, now to be considered an essential part of our jurisprudence. The safety of creditors and purchasers requires that the law should be fixed and certain

* Eden's Rep. i. 404.

with respect to the limitations of real property in family settlements,—not subject to be questioned upon whimsical inventions, started (though by the ablest men) in order to introduce innovations in fundamentals." After treating the subject at great length, and with much ability, he decreed that the plaintiff, George Duke of Marlborough, was entitled to an estate in tail male, and not for life only, as John Duke of Marlborough had intended; and this decree, on appeal, was affirmed by the House of Lords.*

Censure upon him by Lord Eldon.

In the case of *Lowther* v. *Cavendish* †, respecting the words in a will which will carry leasehold estates along with freeholds, Lord Northington commented rather flippantly on the ruling authority of *Rose* v. *Bartlett*, which afterwards drew down upon him this strong censure from Lord Eldon, under the decent disguise that he had been misreported: "I am not disposed to believe that Lord Northington ever made use of the expressions respecting *Rose* v. *Bartlett* which are attributed to him. We all know that he was possessed of great law learning, and a very manly mind; and I cannot but think that he would rather have denied the rule altogether than have set it afloat, by treating it with a degree of scorn, and by introducing distinctions calculated to disturb the judgments of his predecessors, and remove the landmarks of the law." ‡

His blunder in Drury v. Drury.

But his greatest blunder was in *Drury* v. *Drury* §, where he took immense pains to get wrong, holding that "a female marrying under age might renounce the jointure settled upon her, and claim dower and thirds,"—contrary to the practice and understanding of the profession, and contrary to an *obiter* opinion of Lord Hardwicke,—although there was no decision exactly in point. In the course of his rather arrogant judgment, he gave deep offence to the irritable race of conveyancers, by observing, in corroboration of a remark at the bar, that the *conveyancers had not thought about it*,—"which is natural enough, their time being more dedicated to *perusal* than to *thought!*" But they had their revenge when the

* Life of Lord Northington, Appendix, II.

† Ambler, 357.

‡ *Thompson* v. *Lawly*, 2 Bos. & Pull. 315.

§ Eden's Rep. ii. 39.

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case was heard, upon appeal, in the House of Lords, for Lord Hardwicke moved the reversal in a most crushing speech, in which he said "the opinion—the course of conveyancers is of great weight. They are to advise, and if their opinion is to be despised, every case must come to law. No! the received opinion ought to govern. The ablest men in the profession have been conveyancers." Lord Mansfield concurred, and the poor Lord Keeper, having put the question, "so many of your Lordships as are of opinion that this decree be reversed will say, 'CONTENT;' of the contrary opinion, 'NOT CONTENT,'" was obliged to say, "the CONTENTS have it!"

He is made a Peer to preside at the trial of Lord Ferrers.

From George II.'s dislike to him, on account of his connection with Leicester House, and from his insignificance in the Cabinet, he probably would have remained a commoner during the rest of this reign, had it not happened that Lord Ferrers thought fit to shoot Mr. Johnson, his steward, and was to be tried before the House of Peers for the murder. A Lord High Steward was to be appointed for the occasion, and he must be a Peer. Neither Lord Hardwicke nor Lord Mansfield coveted such a painful pre-eminence, and it had been usual that the holder of the Great Seal, if a layman, should preside at such trials. In consequence, on the 27th of March, 1760, Letters patent passed, creating "the right trusty and well-beloved Sir Robert Henley, Knight, a Peer of Great Britain, by the style and title of Baron Henley, of the Grange, in the county of Southampton."

His demeanour on this occasion.

The trial took place in Westminster Hall, on the 16th of April, 1760, and the two following days. "Who," writes Horace Walpole, giving a most amusing narrative of it to his correspondent at Florence, "at the last trials* would have believed a prophecy that the three first men at the next should be Henley the lawyer, Bishop Secker†, and Dick Grenville?‡ The Judge and criminal were far inferior to those you have seen. For the Lord High Steward, he neither had any dignity nor affected any. Nay, he held it all so cheap, that he said at his own table t'other day, '*I will not send for*

* Alluding to the rebel Lords in 1746.

† Now Archbishop of Canterbury.

‡ Now Earl Temple, and, as Lord Privy Seal, having precedence of Dukes.

*Garrick and learn to act a part.*'"* There is no doubt considerable exaggeration here from the writer's indiscriminate love of abuse and ridicule; but it must be admitted that his Grace the Lord High Steward often carried his dislike of what he called "humbug" to a most unwarrantable length, and both when sitting publicly on his tribunal, and in private society, did not scruple to violate the rules of decorum and decency.

On this occasion, however, if there were a departure from the heraldic injunctions of "bowing to the cloth of state," or presenting to his Grace his white wand "on the knee," a striking example was given to the world of substantial justice.† Were such a case now to come before a jury, there would probably be an acquittal on the ground of *insanity*, although the noble culprit was actuated by deep malice towards the deceased,—although he had contrived the opportunity of satiating his vengeance with much premeditation and art—and although the steps which he afterwards took showed that he was fully sensible of the magnitude and the consequences of his crime.

The Lord High Steward having received the answer from every Peer present, to whom he put the question, "*Guilty or not guilty?*"—"GUILTY, UPON MY HONOUR," himself standing uncovered at the chair, and laying his hand on his breast, said, "My Lords, I am of opinion that Laurence Earl Ferrers is guilty of the felony and murder whereof he stands indicted, UPON MY HONOUR." He then announced to the unfortunate Earl the unanimous verdict of his peers against him.

The address of the Lord High Steward, delivered the following day in passing sentence, has been praised as "one of the best specimens of judicial eloquence in existence—being at once grave, simple, dignified, and affecting." ‡

* Letter to George Montague, Esq., 19th April, 1760. To another correspondent he says—"Lord Keeper was Lord High Steward; but was not at all too dignified a personage to sit on such a criminal; indeed, he gave himself no trouble to figure."

† I shall farther examine the case in the Life of Charles Yorke, who acted a most important part in it.

‡ Life, by Lord Henley, 44. Mr. Justice Buller, in passing sentence on Donellan, borrowed a great part of it *verbatim*.

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His speech in passing sentence of death.

"Lawrence Earl Ferrers,

"His Majesty, from his royal and equal regard to justice, and his steady attention to our constitution, which hath endeared him in a wonderful manner to the universal duty and affection of his subjects, hath commanded this inquiry to be made upon the blood of a very ordinary subject, against your Lordship, a Peer of this realm. Your Lordship hath been arraigned; hath pleaded and put yourself on your peers, and they (whose judicature subsists in wisdom, honour, and justice,) have unanimously found your Lordship guilty of the felony and murder charged in the indictment. It is usual, my Lord, for Courts of justice, before they pronounce the dreadful sentence ordained by the law, to open to the prisoner the nature of the crime of which he is convicted; not in order to aggravate or afflict, but to awaken the mind to a due attention to, and consideration of, the unhappy situation into which he hath brought himself. My Lord, the crime of which your Lordship is found guilty — *murder* — is incapable of aggravation; and it is impossible but that during your Lordship's long confinement you must have reflected upon it, represented to your mind in its deepest shades, and with all its train of dismal and detestable consequences. As your Lordship hath received no benefit, so you can derive no consolation from that refuge you seemed almost ashamed to take under a pretended insanity; since it hath appeared to us all, from your cross-examination of the King's witnesses, that you recollected the minutest circumstances of facts and conversations to which you and the witnesses only could be privy, with the exactness of a memory more than ordinarily sound; it is therefore as unnecessary as it would be painful to me to dwell longer on a subject so black and dreadful. It is with much satisfaction that I can remind your Lordship that though from the present tribunal before which you now stand, you can receive nothing but strict and equal justice; yet you are soon to appear before an Almighty Judge, whose unfathomable wisdom is able, by means incomprehensible to our narrow capacities, to reconcile justice with

mercy.* But your Lordship's education must have informed you, and you are now to remember that such beneficence is only to be obtained by deep contrition — sound, unfeigned, and substantial repentance. Confined strictly, as your Lordship must be, for the very short remainder of your life, according to the provisions of the late act, yet from the wisdom of the legislature, which, to prevent as much as possible this heinous and horrid crime of murder, hath added infamy to death, you will be still, if you please, entitled to converse and communicate with the ablest divines of the Protestant church, to whose pious care and consolation in fervent prayer and devotion, I most cordially recommend your Lordship. Nothing remains for me but to pronounce the dreadful sentence of the law, and the judgment of the law is, and this High Court doth award that you, Laurence Earl Ferrers, return to the prison of the Tower, from whence you came; from thence you must be led to the place of execution on Monday next, and when you come there, you must be hanged by the neck till you are dead, and your body must be dissected and anatomised, and God Almighty be merciful to your soul!"

His humanity to the prisoner after the conviction.

Henley acted with great propriety between the sentence and execution, doing what he could to gratify the unhappy criminal's last wishes, without saving him from his deserved fate. Horace Walpole writes: — "Two petitions from his mother and all his family were presented to the King, who said, 'as the House of Lords had unanimously found him guilty, he would not interfere.' Last week my Lord Keeper very good-naturedly got out of a gouty bed to present another: the King would not hear him. 'Sir,' said the Keeper, 'I do not come to petition for mercy or respite, but that the 4000*l.* which Lord Ferrers has in India bonds, may be permitted to go, according to his disposition of it, to his

* His Grace thought it unnecessary to disqualify himself as Baron Perrin did upon a similar trial for murder. The prisoner, after the verdict, having still asserted his innocence, the Judge thus modestly began: "Prisoner, you are soon to appear at the bar of a greater, *and, let me add, of an abler Judge;* but, with my limited understanding, I must approve of the verdict, and my duty requires me to pronounce upon you the awful sentence of the law." — *Ex relatione Lord Chief Baron Alexander.*

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mistress, his children, and the family of the murdered man.' —'With all my heart,' said the King, 'I have no objection; but I will have no message carried to him from me.' However, this grace was notified to him, and gave him great satisfaction." *

After this trial, although the Lord Keeper was now entitled to speak and vote as a Peer, he was still treated rather contumeliously by his colleagues, and he does not appear to have taken any part in debate or in political intrigue till a new field was opened to him by the accession to the throne of the youthful Sovereign, to whom and to whose father he had been so much devoted.

* Letter to Sir Horace Mann, in which there is an extremely interesting account of the execution.

# CHAPTER CXL.

CONTINUATION OF THE LIFE OF LORD NORTHINGTON TILL HE RESIGNED THE GREAT SEAL.

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Oct. 25. 1760. Accession of Geo. III., Henley elevated to the dignity of Lord Chancellor, and Earl of Northington.

THE death of George II. made a very favourable change in the position of the Lord Keeper. Hitherto he had been received coldly at Court, and he had been without any political weight. The new King regarded him with great favour as a steady adherent of Leicester House, who might assist Lord Bute in the contemplated change in the administration. On the 16th of January, 1761, on his surrendering the Great Seal into his Majesty's hands, he received it back with the title of "Lord Chancellor," instead of "Lord Keeper *," and he was afterwards created Earl of Northington †, and appointed Lord Lieutenant of the county of Southampton. ‡

His application to the King to abolish after-dinner sittings in Court.

He took the earliest opportunity to avail himself of the partiality of the reigning monarch, by asking his permission to discontinue the evening sittings in the Court of Chancery on Wednesdays and Fridays. George III. made a good story, which he used to tell for the rest of his reign, of what passed between him and his Chancellor on this occasion. "I asked him," said his Majesty, "his reason for wishing that these sittings should be abolished?"—"Sir," answered he, "that I may be allowed comfortably to finish my bottle of

* 1 Geo. 3., 16th January, 1761. Memorandum—That the Right Honourable Robert Lord Henley, Lord Keeper of the Great Seal of Great Britain, delivered the Great Seal to his Majesty in Council, when his Majesty was graciously pleased to re-deliver to him the said Great Seal, with the title of Lord Chancellor of Great Britain. Whereupon his Lordship, then in council, took the oaths appointed to be taken instead of the oaths of allegiance, and also the oath of Lord High Chancellor of Great Britain.—*Cr. Off. Min.*, No. 2. p. 1. By another entry, No. 2. p. 4. it appears, that on the first day of the following Hilary Term, he took all the oaths over again in the Court of Chancery in Westminster Hall.

† 19th May, 1764.—By this title I shall hereafter call him.

‡ 21st August, 1761.

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port after dinner; and your Majesty, solicitous for the happiness of all your subjects, I hope will consider this to be reason sufficient." * The permission was graciously accorded — we may suppose an explanation being added that *post-prandian* sittings were becoming generally unpopular, and were unsuited to the changed manners of society.†

He adheres to Lord Bute. Oct. 1761.

Lord Bute, being at first sworn of the Privy Council, — then made Secretary of State, — next forcing Mr. Pitt to resign, — and, at a short interval, becoming himself Prime Minister, before he had ever spoken in Parliament‡, and while only a Scotch Peer, without even being a representative one — the Leicester House party, to which Lord Northington had so steadily adhered, was for a brief space triumphant. Although he now had a good deal of influence in the disposal of places, and he took a part in the factious conflicts which divided the Court, still he was not prominent as a politician. He does not seem to have been much consulted about the treaty of peace, which it was the great object of Lord Bute's administration to negotiate, and severely as the preliminaries of Fontainebleau were attacked by Lord Hardwicke, I cannot find that he gave any assistance to defend them. He was even silent on the Cider Bill. He spoke, when permitted, in such tranchant fashion, and was so apt to give an advantage to the adversary, that I suspect he was strongly cautioned to remain quiet.

Sept. 1763. Resignation of Lord Bute, and ministry of Duke of Bedford.

When Lord Bute, having obtained peace abroad and thrown all England into an uproar, suddenly resigned, and the Duke of Bedford was supposed to be Minister, Lord Northington retained the Great Seal, but while this arrangement continued he seems strictly to have confined himself to the judicial duties of his office. Having received a personal order from the King that Wilkes should be prosecuted, he left the matter

* According to other accounts, the Lord Chancellor's answer was still more blunt: — "that I may get drunk, please your Majesty;" or, — "because at that time I am apt to be drunk."

† Sir William Grant, when Master of the Rolls, pursued another remedy, by ordering his dinner, — with a bottle of Madeira and a bottle of port, — to be ready for him at the Piazza Coffee House, at ten at night, when the sittings were over.

‡ It is a curious fact, that when he made his maiden speech he was prime minister. His most public previous effort had been in private theatricals.

entirely in the hands of the law officers of the Crown.* The general warrants were issued by Lord Halifax to arrest the printer and publisher of No. 45. of the "North Briton," and the successive foolish steps were adopted which brought the Demagogue into such notoriety and importance, without the head of the law being at all consulted.

Ascendency of George Grenville.

George Grenville, who was intended to act only a subordinate part in this government, had established a great ascendency, and acting upon the contracted notions of the constitution of the country which he had imbibed when studying for the bar in a special pleader's office, he threw every thing into confusion at home, and he sowed the seeds of that terrible conflict, which, after he was in his grave, led to the dismemberment of the British empire. It is little to the credit of Lord Northington, that, while he was Chancellor, the ill-omened plan was adopted of taxing America by the British parliament, and the too famous American Stamp Act was passed. A constitutional lawyer in the cabinet, like Lord Camden, would have reprobated such a measure on principle, and a wary one, like Lord Mansfield, would have disapproved of it as dangerous. But Lord Northington, allowed to enjoy the sweets of his office, gave himself no trouble either about the domestic or colonial policy of the government.

Lord Northington Lord High Steward at the trial of Lord Byron for murder.

In the midst of the conflicts of faction, the town was amused for a short time by the trial of a Peer on a capital charge. William Lord Byron, uncle of the illustrious author of "CHILDE HAROLD," having killed a gentleman of the name of Chaworth in a duel fought in a tavern, an indictment for murder was found against him by a grand jury of the county of Middlesex, and was removed, by certiorari, into the House of Lords. Thereupon the trial was ordered to take place in Westminster Hall, and the Earl of Northington was appointed to preside as Lord High Steward.

* "Lord Chancellor told me he had mentioned the 'North Briton' to the King, and that his Majesty had desired him to give directions for the printers being prosecuted. In consequence of which, he had spoken to Lord Shelburn to have a case prepared for the opinion of the Attorney and Solicitor General." — *Journal of the Duke of Grafton.*

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April 16. 1765.

On the day appointed, the noble prisoner appearing, attended by the gentleman gaoler and the axe, with the edge turned from him, his Grace addressed to him the following preliminary admonition and comfort:—"William Lord Byron, your Lordship is unhappily brought to this bar to answer a heavy and dreadful accusation, for you are charged with the murder of a fellow-subject. The solemnity and awful appearance of this judicature must naturally embarrass and discompose your Lordship's spirits, whatever internal resource you may have in conscience to support you in your defence. It may be, therefore, not improper for me to remind your Lordship that you are to be tried by the fixed and settled laws of a free country, framed only to protect the innocent, to distinguish the degrees of offence, and vindictive ouly against malice and premeditated mischief. Homicide, or the killing of a fellow-creature, is, by the wisdom of law, distinguished into classes; if it ariseth from necessity or accident, or is without malice, it is not murder; and of these distinctions, warranted by evidence, every person, though accused by a grand jury of the highest offence, is at full liberty to avail himself. As an additional consolation, your Lordship will reflect that you have the happiness to be tried by the supreme jurisdiction of this nation; that you can receive nothing from your peers but justice, distributed with candour,—delivered, too, under the strongest obligation upon noble minds—*honour*. These considerations will, I hope, compose your Lordship's mind, fortify your spirits, and leave you free for your defence."

All the Peers present having agreed in a verdict of "*Manslaughter*," except four, who said *Not Guilty* generally, and privilege of peerage being pleaded in bar of sentence, the Lord High Steward without, as usual, giving a warning that such a plea could not be available on a second conviction, merely informed the prisoner that he was entitled to be discharged,—broke his white wand in a manner which could not be considered an imitation of Garrick in Prospero,—and abruptly adjourned the House.

Now, as at the trial of Lord Ferrers, he was too regard-

less of forms, but he committed no material mistake of which the accused or the public could complain.*

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July, 1765. Formation of the Rockingham administration.

When, at last, the King was so sick of being ruled and lectured by George Grenville, that he preferred Lord Rockingham and the Whigs, without the aid of Mr. Pitt, — a great mistake was committed by them in not insisting on a new Chancellor. They did make Chief Justice Pratt a Peer, by the title of Lord Camden; but if they had given him the Great Seal,—from his talents and popularity, they might have weathered the perils to which they were exposed, and the country, enjoying the benefit of their sound constitutional principles, might have escaped the anarchy and misgovernment which soon followed. But Lord Northington hated them; — while he sat in the cabinet with them, he watched them with jealousy, — and at last he plotted, and he effected, their ruin. As they were to repeal the American Stamp Act, and to censure the proceedings against Wilkes, which he had sanctioned, one does not well understand how he should have wished or been permitted to continue in office. But he was a "friend" of the King, — and some were silly enough to think that he might secure to the government the royal favour and confidence.

Repeal of the Stamp Act.

The Stamp Act having produced the discontents and disturbances in America which might have been expected from it, — much against the King's wishes, it was to be repealed; but to mollify him, a preliminary resolution was moved, "that Parliament had full power and right to make laws of sufficient force to bind the colonies." When this came to be debated in the House of Peers, it was objected to by Lord Camden as being not only ill-timed, but as being untrue, on the ground that it might, in its general language, include the power and right to *tax* the colonies, which he strongly denied. "My Lords," he proceeded, "he who disputes the authority of any supreme legislature treads upon very tender ground. It is therefore necessary for me, in setting out, to desire that no inference may be drawn from any thing I shall advance. I deny that the consequences of my reason-

Feb. 1766. Power of parliament to tax the colonies.

* 19 St. Tr. 1177—1236.

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ing will be, that the colonies can claim independence, or that they have a right to oppose acts of the legislature in a rebellious manner, even although the legislature has no right to make such acts. In my opinion, my Lords, the legislature had no right to make this law. The sovereign authority, the omnipotence of the legislature, is a favourite doctrine, but there are some things which you cannot do. You cannot enact any thing against the Divine law. You cannot take away any man's private property, without making him a compensation. You have no right to condemn any man by bill of attainder without hearing him. But though the Parliament cannot take any man's private property, yet every subject must make contribution: and this he consents to do by his representative. Notwithstanding the King, Lords, and Commons could in ancient times tax other persons, they never could tax the clergy." He then goes on to consider the case of the counties palatine, of Wales, and of Berwick, showing that they never were taxed by Parliament till they sent representatives to the House of Commons; observing, that the Irish tax themselves, and that the English parliament could not tax them. "But," said he, "even supposing that the Americans have no exclusive right to tax themselves, it would be good policy to give it them, instead of offensively asserting a power which you ought never to have exercised. America feels that she can do better without us than we can without her." This was Lord Camden's first speech in the House of Lords.

Lord Northington's invective against the Americans.

Lord Northington, leaving the woolsack, commenced in a tone most insulting to the new Peer, and what was much worse, most insulting to the people of America, — Benjamin Franklin being a listener below the bar. Said he, "I did not intend to trouble your Lordships in this debate, but hearing doctrines laid down so new, so unmaintainable, so unconstitutional, so mischievous, I cannot sit silent. Such paradoxes are the result of a heated imagination, accompanied by a facility of utterance and readiness of language. The noble and learned Lord lays it down that the Americans have an exclusive right to impose taxes on themselves. He is to lay down the law for them, and the British parliament

is not to interfere with them. With great submission to the noble and learned Lord, I believe that all except himself will admit that every government can arbitrarily impose laws on all its subjects; there must be a supreme dominion in every state, whether monarchical, aristocratical, democratical, or mixed: to that supreme dominion all must bend. The noble and learned Lord has endeavoured to distinguish between the civil power of government and its casuistical power. Every legislature ought to make laws for the safety and the benefit of the whole; but, my Lords, suppose they make a law contrary to this principle, a resistance to such law is at the risk of life and fortune." After touching upon the power to tax the clergy, and the other illustrations introduced, he proceeded: "My Lords, I seek for the liberty and constitution of this kingdom no farther back than the Revolution: there I make my stand; and in the reign of King William an act passed avowing the power of this legislature over the colonies. As to the expediency of carrying the Stamp Act into execution, does the noble and learned Lord mean that the King has a dispensing or suspending power? The King is sworn by his coronation oath to execute all the laws of this realm. Then the noble and learned Lord would get rid of it by a repeal,—but if you should concur with his Lordship in the expediency of repeal, you will tell twelve millions of your subjects of Great Britain and Ireland, that you prefer to them the colonists who have got rich under their protection, and you will soon have these colonists at your doors, not merely besieging you as now with petitions, but using the '*argumentum baculinum.*' What, my Lords, have these favourite Americans done? They have called a meeting of their States, and then have entered into resolutions by which, in my opinion, they have forfeited all their charters. But, my Lords, the nature of the Stamp Act seems to be mistaken. It binds all the colonies to contribute to the expence of the general government incurred in defending them, but it does not control the power each province has to lay internal taxes for local purposes. How could the Americans have acquired the exemption which they claim? If all the great lawyers in Westminster Hall should give an opinion

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that the King could grant the territory of North America, none could say that the King could put the grantees out of their subjection to the *summum imperium* of Great Britain. My Lords, the colonies are become too big to be governed by the laws they at first set out with. They have, therefore, run into confusion, and it will be the policy of this country to form a plan of laws for them. If they withdraw allegiance, you must withdraw protection; and then the little state of Genoa or of San Marino may soon overrun them." *

This coarse invective, the first of the sort delivered in Parliament against "the Rebels," though sure to gratify the King and the "King's friends," was so very indiscreet, and was so evidently calculated to produce resentment and resistance on the other side of the Atlantic, that not only Lord Rockingham and his Whig colleagues were appalled by it, but it gave uneasiness to all moderate Tories who had approved of the Stamp Act, and were still desirous of supporting it.

Lord Mansfield's disclaimer.

Lord Mansfield immediately followed, in the hope of repairing or mitigating the mischief; and, notwithstanding his habitual self-command, was unable to conceal his mortification. Thus he gently disclaimed the diatribe of the Chancellor: "I stand up, my Lords, to bring your Lordships to the question before you, which is, whether the proposition enunciated by the noble Duke† as to our right to make laws to bind the colonies is, according to what appears from our law and history, true, or not true? It is out of the question whether it was, or was not, expedient to pass the law; whether it be, or be not, expedient to repeal it. Out of this question, too, are the rules which are to guide the legislature in making a law. This law is made, and the question is, whether you had a right to make it?" Without farther reference to the Chancellor, he then goes on, with great calmness, and with arguments to which I have never been able to find an answer, to deny, as far as the *power* is concerned, the distinction between a law to *tax* and a law for any other purpose. The resolution was agreed to, but this debate marred the effect of the repeal of the Stamp Act, and

* 16 Parl. Hist. 161—177.
† The Duke of Grafton, who moved the resolution.

gave a great "*shake*" to the Rockingham administration, by showing that their conciliatory policy was distasteful to the Court.

The Lord Chancellor seems to have remained quiet for the rest of the session, and not even to have spoken when the House of Lords, very properly, rejected the bill passed by the Commons, declaring "General Warrants" to be illegal; leaving this question to be decided (as it was satisfactorily) by the Courts of Common Law.

June 6. 1766. Lord Northington wishes a change of government.

Soon after the prorogation, it was evident that a political crisis was at hand. The immediate cause of the dismission of the ministry is attributed to an intrigue of the Lord Chancellor Northington, who had long contemplated their feeble state, and meditated their overthrow.* He had now personal as well as courtier-like reasons for wishing that there might be a revolution in the cabinet. Those legs, of which he had taken such bad care in his youth, refused to carry the Chancellor any longer between the woolsack and the bar, and he was desirous of making the repose which they demanded as comfortable as possible. His attacks of gout had been of late so frequent and severe, that he found he could not longer hold the Great Seal; yet he was unwilling to retire into private life, and he thought that, in taking an active part in forming a new administration, he should be able to make a good bargain for himself. It may seem strange that he hoped to accomplish his object under the auspices of Mr. Pitt, who had been so odious at Court after his quarrel with Lord Bute, and had expressed a strong opinion against taxing America. But here begins the period of the life of that most illustrious patriot which is the least to his credit. Piqued that there should be a Whig government in which he was not included,—instead of supporting it, he had publicly said, "Lord Rockingham has not my confidence†;" and, from his belligerent tendencies, there was an expectation that, if he were once in office, he might be induced to take

* 1 Adolphus, 225.

† Lord Rockingham's position, at this time, bears a considerable resemblance to that of Mr. Canning in 1827, when the ultra Tories and Lord Grey coalesced to eject him.

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Coalition between Geo. III. and Mr. Pitt to turn out Lord Rockingham.

part against the Americans, and to use the necessary force for subduing them. There is no such bond of political union as a common dislike of the minister. This makes all difference of principle and all past quarrels be forgotten. George III. and the "Great Commoner" being equally desirous of getting rid of Lord Rockingham, there had been much coquetry between them during some months, and, for the nonce, there was actually considerable good will. Lord Northington was well aware of these reciprocal feelings, and determined to take advantage of them.

Lord Northington's scheme for turning out the Rockingham administration.

The occasion which he seized for effecting his purpose was the preparation of a Code for the government of Canada. A proclamation had issued in 1764, by which all the laws of England were introduced into the French provinces, ceded by the peace of Paris; but this rash experiment (as might have been foreseen) caused general discontent and confusion. The papers relating to the disputes had, according to custom, been laid before the Attorney and Solicitor General — most able men — Charles Yorke, and De Grey — and they had prepared a very masterly report for the consideration of the cabinet — proposing to leave to the natives their ancient rights of property and civil laws, and to temper the rigour of their criminal procedure by the more equitable and liberal system of English jurisprudence. Soon after the commencement of the recess a cabinet was called to consider this report, and the Chancellor being confined by a fit of the gout, the meeting took place at his house in Lincoln's Inn Fields. Contrary to his good-humoured and courteous, though blunt and careless manner, he was exceedingly cross and peevish on this occasion, and found fault with every body and every thing. He complained that he had been slighted in the affair by Mr. Attorney and Mr. Solicitor; he bitterly criticised and abused their performance; and he concluded by giving an opinion that no proposition on the subject could be sanctioned by the cabinet until they had procured a complete digest of all the existing laws of Canada, — which would occasion a delay of at least a whole year. His colleagues believed that his waywardness proceeded from the bodily anguish he was suffering, and the meeting broke up without coming to any definitive

July 4. 1766.

resolution. Next day he refused to attend another cabinet —(as they still supposed) from his great toe being more painful. The rest of the ministers considering the matter very pressing, — that there might not be disturbances at Quebec, as well as at Boston, held two more meetings without him at the Duke of Richmond's house at Whitehall. The Attorney General, who had taken the chief part in framing the Report, being summoned to attend, gave ample information on the principles by which he was guided, and proposed that it should be sent to Quebec for the inspection and consideration of Governor Carleton and the Colonial crown lawyers, with instructions to return it corrected, according to their judgment, so that it might be in all respects suited to the circumstances and feelings of the province. Every difficulty seemed obviated. In consequence Lord Egremont, in whose department the business more immediately was, and who had recommended the summoning of the Attorney and Solicitor General, went out of town, declaring his willingness to confide his judgment to their decision. Mr. Attorney, thinking all his cares over till the Morrow of All Souls, and the reassembling of parliament should again make him wish that he could be divided into ten portions to be working in ten places at once, — retired into the country to enjoy the repose of the long vacation.

July 6. 1766.

Lord Northington advises the King to send for Mr. Pitt.

But the Lord Chancellor, when he heard at night of this last meeting of the Cabinet, loudly exclaimed, "By G—, they shall never meet again." Next morning, repairing to Richmond, he informed the King "that the Ministers could not go on, and that at all events he himself must resign the Great Seal, and would attend Cabinet Councils with Lord Rockingham no longer." He concluded by advising his Majesty to send for Mr. Pitt, — holding out hopes that there was a change in him, and that he might now be found more pliant and accommodating. The King, without considering too curiously what might follow, being delighted with the prospect of getting rid of the men who had repealed the Stamp Act, and had induced Parliament to condemn the proceedings against Wilkes, very willingly adopted this ad-

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vice, and they manufactured the following letter to "the Great Commoner:"

"Richmond Lodge, July 7. 1766.

"Mr. Pitt,

The King's letter to Mr. Pitt.

"Your very dutiful and handsome conduct the last summer makes me desirous of having your thoughts how an able and dignified ministry may be formed. I desire, therefore, you will come for this salutary purpose to town.

"I cannot conclude without expressing how entirely my ideas concerning the basis on which a new administration should be erected are consonant to the opinion you gave on that subject in parliament a few days before you set out for Somersetshire. *

"I convey this through the channel of the Earl of Northington; as there is no man in my service on whom I so thoroughly rely, and who I know agrees with me so perfectly in the contents of this letter.

"GEORGE R."

As soon as Lord Northington arrived in town he forwarded the royal missive, accompanied by the following communication from himself:

"London, July 7. 1766.

"Sir,

Lord Northington's letter to Mr. Pitt.

"I have the King's command to convey to you his Majesty's note inclosed; and as I am no stranger to the general contents, I cannot help adding that I congratulate you very sincerely on so honourable and so gracious a distinction.

"I think myself very happy in being the channel of conveying what I think doth you so much honour, and I am persuaded will tend to the ease and happiness of so amiable and respectable a Sovereign, and to the advantage of this distracted kingdom.

"It is the duty of my office to attend in London (though my health requires air and the country). If therefore, on

* There is no trace of this speech any where to be found.

your arrival, you want any information, I shall be very ready and willing to afford you all I can. CHAP. CXI.

"I have the honour to be, with great respect,

"Dear Sir,

"Your most obedient,

"Most humble Servant,

"NORTHINGTON."

Mr. Pitt thus answered Lord Northington:

"Tuesday, 10 o'clock, July 8. 1766.

"My Lord,

"I received this morning the honour of your Lordship's very obliging letter, inclosing his Majesty's most gracious commands in writing to me. I am indeed unable to express what I feel of unfeigned gratitude, duty, and zeal, upon this most affecting occasion. I will only say, that the remnant of my life, body, heart, and mind, is at the direction of our most gracious and clement Sovereign.

Mr. Pitt's letter to Lord Northington.

"I will hasten to town as fast as I am able, and will, on my arrival, take the liberty to avail myself of the very kind permission your Lordship is so good as to allow me of troubling you: in the mean time, I beg leave to express, in a word, how truly sensible I am of the great honour your Lordship does me by such favourable sentiments on my subject, and to assure you how proud and happy I am in receiving such flattering marks of friendship and confidence from your Lordship. I am, &c."

And here is his courtly response to the King:

"Sire,

"Penetrated with the deepest sense of your Majesty's boundless goodness to me, and with a heart overflowing with duty and zeal for the honour and happiness of the most gracious and benign Sovereign, I shall hasten to London as fast as I possibly can,—wishing that I could change infirmity into wings of expedition, the sooner to be permitted the high

Mr. Pitt's letter to the King.

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honour to lay at your Majesty's feet the poor, but sincere offering of the little services of

"Your Majesty's
"Most dutiful Subject,
"and devoted Servant,
"WILLIAM PITT."

The particulars of the negotiation are not certainly known, but they may easily be conjectured from the two following letters from Lord Northington to Mr. Pitt:

"London, July 14. 1766.

"Dear Sir,

Lord Northington to Mr. Pitt.

"I am sorry to find that you are so much out of order, and hope the air will speedily remove that complaint; which I trust will not be immediately felt, as, by his Majesty's commands, I yesterday wrote to Earl Temple that the King desired to see him in London; and on the other side you will see his answer, received since I began this page. I desire to know when you go to Hampstead; as, if occasion requires, I may be able to communicate accordingly.

"I will apprize the King of your unlucky situation; who was so well satisfied with your dutiful behaviour as to feel it accordingly. I am with great respect, &c."

"Sunday, 5 P.M., July 20. 1766.

"Dear Sir,

Same to same.

"Having seen his Majesty after the drawing room to-day, I now sit down to answer your very obliging letter; which, as far as it related to myself, I could not before do.

"The invidious share I have taken in the present business was the result of my sensible feeling for my most gracious Master, and this great commercial and brave country, with which I thought nothing could stand in competition. I therefore determined not to be considerate of myself in any respect, but to stand forth as a public servant, or retire a private man, as either should contribute to the King's service.

"As I suppose you might speak with regard to me in the same style of partial consideration to the King you did to myself, I found his Majesty very desirous that I should take a great office in his administration, to which I assented, and to that

you so kindly pointed out. Though no office is so personally inviting as that I am now in, yet is true what I urged that my health cannot sustain the Chancery, the woolsack, and state affairs. I need not, after what I said to you, say that the succession of Lord Camden will be most agreeable to myself. Your own thoughts respecting yourself have my full concurrence in, and approbation of, their propriety, and the other persons mentioned have all due respect from me.

"I shall only add, that if you lend your advice, as also your reputation, and the rest of the administration act with cordiality and resolution (from me you shall have the fullest support I can give), I see no difficulties to frighten *men*.

"I should have made you another visit after I had seen Lord Temple; but I know, in general, how unseasonable visits are to invalids. If you are well enough, I would call at your most convenient hour to-morrow. I have the honour to be, with the greatest respect, dear Sir,

"Your most obedient,

"and most humble Servant,

"NORTHINGTON."

Formation of Mr. Pitt's last administration.

The Chancellor had been the bearer of a communication from the King to Lord Temple, asking him to take office; but his terms could not be acceded to,—and without his co-operation was formed an administration the most fantastical in its construction, and the most whimsical in its proceedings, of any to be found in our annals.*

* The following is Horace Walpole's account of Lord Northington's breaking up the Rockingham administration: "On the 7th of July, the Chancellor went into the King, and declared he would resign — a notification he had not deigned to make to the ministers, but which he took care they should know by declaring openly what he had done. When the ministers saw the King, he said, coolly, 'Then I must see what I can do.'" — *Memoirs of King George III.*, vol. ii. 334. Sir Denis Le Marchant, the learned editor of this work, says: "Lord Northington's health, and his frequent disagreements with his colleagues, had for some months made him desirous of an honourable and quiet retreat. There is no doubt, both from his own letters and the traditions still extant at the bar, that his habits of hard labour and extreme conviviality, had by this time undermined his constitution much to the deterioration of his temper; and he, perhaps, suspected slights that were never intended. Moreover, the scrupulous sense of public duty, the natural reserve and strict propriety of deportment which characterised Lord Rockingham and Mr. Conway, were by no means to his taste. He must have felt even less easy with such associates than his successor Lord Thurlow did in a later day with Mr. Pitt; and, like him, his usual course in the

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Lord Northington resigns the Great Seal, and is appointed President of the Council.

Lord Northington went through the formal ceremony of resigning the Great Seal into his Majesty's hands, at St. James's Palace, on Wednesday, the 30th of July, 1766, and was at the same time declared by his Majesty PRESIDENT OF THE COUNCIL, with many gracious acknowledgments of of his faithful services.

cabinet was to originate nothing, and to oppose every thing. The commercial treaty with Russia, a measure of unquestionable benefit, nearly fell to the ground owing to his unreasonable and obstinate opposition. He would rarely listen to remonstrances from his colleagues; and was on such cold terms with them, as probably justified him in his own mind in breaking up the cabinet so unceremoniously. He was too fearless to stoop to intrigue; and there was no necessity for it on this occasion."

# CHAPTER CXLI.

## CONCLUSION OF THE LIFE OF LORD NORTHINGTON.

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Pension, &c., to Lord Northington.

My Lord President and Ex-chancellor Northington, while labouring for the public good,—in the new arrangements was not forgetful of what was due to himself. As an indemnity for his sacrifice of the Great Seal, it was agreed that, in addition to the salary of his present office, he should receive an immediate pension of 2000*l.* a year; that on his resignation of this office the pension should be raised to 4000*l.* a year; and that he should have a reversionary grant of the office of clerk of the Hanaper in Chancery for two lives, after the death of the Duke of Chandos.

Although Lord Northington held a high appointment at the commencement of this motley administration, his connection with it was fleeting, and this is not the place to tell of the mortification, failure, and eclipsed fame of the "Great Commoner," become Earl of Chatham,—when he found himself, from physical and mental infirmity, unable to control the discordant materials of which he had thought fit to compound his new Cabinet.*

Order in Council against the exportation of corn.

The only measure of the government in which Lord Northington took any part, was the embargo to prohibit the exportation of corn; and here he exhibited his characteristic rashness and recklessness,—which seemed to be aggravated by age and experience.

On account of the almost unprecedented succession of wet weather in the summer and autumn of 1766, the harvest had

* Lord Northington, from the time of his appointment as Lord President, frequently corresponded with the Duke of Grafton, who was at the head of the Treasury. Being at the Grange in September, 1766, he writes to him: "I have not spent my time here without regard to my new employment, having perused the papers which I brought down here, and which have been long in arrear. I am sorry Lord Chatham is laid up; and shall only add, that I think no journey inconvenient which tends to the King's service, or to express the great personal regard with which I am,—My dear Lord," &c.

failed in many parts of England, the price of bread had risen alarmingly, and a famine was apprehended. A foolish proclamation was issued against "forestallers and regraters," which not increasing the quantity of corn, nor lessening the demand for it,—in as far as it had any operation, aggravated the evil by interfering with the operations of commerce. An order was then made by the King in Council, in which Lord Chatham, though absent, concurred, prohibiting the exportation of corn, and laying an embargo on ships loaded with cargoes of corn about to sail for foreign countries, where the scarcity was still more severe. Although it probably would have been wiser to have left the trade in food entirely free, without duty or bounty, the measure was generally approved of, and the government was actuated by the best motives in resorting to it. Still it was contrary to law; for there was no statute to prevent the exportation of any sort of grain, however high the price might be, or to authorize the Crown to interfere on such an occasion. Those concerned in the embargo were therefore liable to actions, and required to be indemnified. This was the rational view of the subject taken by Lord Chatham himself in his maiden speech in the House of Lords, on the first day of the ensuing session. He said, "it was an act of power which, during the recess of Parliament was justifiable on the ground of necessity;" and he read a passage from Locke on Government, to show that, "although not strictly speaking legal, the measure was right in the opinion of that great friend of liberty, that constitutional philosopher, and that liberal statesman." Upon this footing a bill of indemnity would have passed without difficulty. But Lord Northington, for some unintelligible reason, contended that the measure was strictly legal, and that no indemnity was necessary.* He went so far as to maintain

Nov. 1766.

Lord Northington contends that

* The inconsiderate manner in which he had originally agreed to the measure, may be learned from an extract of his letter to the Duke of Grafton, dated 31st August, 1766. "I come now to that part of your Grace's letter which more immediately relates to my office; the revival of the prohibition of the exportation of corn, by order of council, pursuant to the late act — which I have not here. And I am of opinion, that it is absolutely fit and necessary, as I stand at present informed." In truth, the order was directly contrary to the late act; and the President of the Council advises an order, supposed to be framed on an act which he does not see, and with which he is wholly unacquainted! Surely, we are less slovenly nowadays in our mode of transacting public business.

that the Crown had a right to interfere even against a positive act of parliament, and that proof of the necessity amounted to a legal justification. Seemingly unconscious that he was standing up for a power in the Crown to suspend or dispense with all laws, he defied any lawyer to contradict him, and saying "he was no patron of the people," he even went on to throw out a sarcasm against the noble Earl, now at the head of the government, for his past popular courses.

this was lawful, and that a bill of indemnity was unnecessary.

Lord Mansfield refutes him.

Lord Mansfield, never displeased with an opportunity of chastising Lord Northington, clearly showed that the power he claimed for the Crown was utterly inconsistent with the constitution, and if it ever in any degree existed, was entirely at variance both with the letter and the spirit of the Bill of Rights.*

Lord Northington desirous of retiring.

The Ex-chancellor, though, to the amazement of mankind, countenanced by a great constitutional lawyer, who was expected to scout such absurd doctrine, never seems to have rallied from this downset. I cannot discover that he again opened his mouth in parliament, although he continued sulkily in office till the close of the following year. Finding that, in the absence of Lord Chatham, there were dreadful distractions in the cabinet, and that he had no weight there, he soon became desirous of retreating to the quiet enjoyment of his pensions and his sinecures.

Joint representation of the Duke of Grafton and Lord Northington to Lord Chatham.

He communicated his wish to resign to the Duke of Grafton, and they sent a joint representation to Lord Chatham, pointing out "the present state of the King's affairs from the want of his Lordship's support and influence, and from the unfortunate situation of his Lordship's health,—the administration having been rested, *ab initio*, on his Lordship's weight and abilities." They seem to have received a very rough answer from him, as we may conjecture from the following note, addressed by Lord Northington to the Duke of Grafton:

May 29. 1767. Lord Northing-

"My dear Lord,

"I have the properest sense of your Grace's communication of a letter, most extraordinary, and, as relative to our-

* 16 Parl. Hist. 245—313.

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ton to the Duke of Grafton, expressing intention to retire.

selves, most absurd as well as dangerous. My sentiments must remain as they were, in justice to my own honour, my duty to the King and the public, and the peace and quiet of my own mind. I have the honour to be, with the greatest respect," &c.

While Lord Northington's resignation was under consideration, he paid his respects at St. James's, and then sent to the Duke the following account of his reception:

June 11. 1767. Same to same, giving an account of a visit to St. James's.

"My dear Lord,

"I was this morning at Court, and had the honour of speaking to ——* at the drawing-room, but as he had no commands for me, and several persons of ministry going in, I did not trouble the closet. But I thought it fit to signify to your Grace, that I am convinced, from circumstances, that it is wished by *many* to pause till after the session is up. And I could perceive, by the discourse of a noble neighbour of mine, that the thing you are inquiring after is as extensive as I thought it, and too large for your reception. The *many* alluded to above are not of our friends, and it being my permanent opinion that we should penetrate through the present cloud, I send this for your better and cooler judgment.

"The S^y was beginning a long account of the state of America, &c. &c. But in the midst of this *hurlothumbo* they were called both in, staid a long time in the closet, and I left them there. . . . My Lord, the affection I bear to your Grace's sentiments, honour, and abilities (and you know I can speak on this occasion only from truth), has induced me to suggest every material circumstance relative to your Grace's conduct in this nice and important crisis, and if my friendship outruns my judgment, I am confident that I shall not only receive your pardon, but thanks for my warmth in endeavouring to express myself,—My dear Lord,

"Your Grace's," &c.

Lord Northington was induced to delay his resignation, and to retreat into the country,—whence he wrote a letter to

* Word illegible.

the Duke, in which, after expressing his satisfaction at having been present when his son was unanimously elected for Hampshire, he says: "though the air and retirement have afforded me some ease, the weather hath as yet debarred me of any relief. I barely walk, and am without strength or appetite. Though I was not surprised that your Grace received no satisfaction in the information you inquired after, yet I lament it, as it daily confirms what I have long suspected, that the rancour and intoxication of faction would sap the very foundations of government. The contagion is so widely spread that it is beyond me to know whither to turn to avoid it. I hope, however, your next may afford me more comfort, as I am sensible of your Grace's discernment to discover, and zeal to pursue, every avenue that may open and lead to the stability of your King and country."

July 9. 1767. Same to same, on the disordered state of public affairs.

A few days after, the Duke wrote to him an enormously lengthy despatch, giving him an account of negotiations with the Duke of Bedford, Rigby, Conway, Lord Gower, Lord Rockingham, &c., and thus concluding, "one favour I must entreat of your Lordship, who, considering the consequences it is of to the public, must not refuse — which is, though out of office, to assist the cabinet, and particularly myself, with the advice which your ability and great experience in public affairs will make so essential to the King's service." In his answer, Lord Northington says:

July 18. 1767.

"I think myself much obliged to your Grace for communicating to me, in so clear and historical a manner, the progress of political matters since I left London." After tedious comments on recent intrigues, and praising the Duke for continuing in office, he thus concludes. "As to myself, my Lord, I thought it my duty frankly to open my state of health, and its insufficiency to an office so extensive, and of so much attendance: It was but just both to the King and to his ministers, as I was and am morally certain I shall never re-establish my strength to sustain that burthen, but I desire to be laid at the King's feet as one that out of office will be as zealous as in — and as one that will ever to the best of his abilities support his Majesty's government,

July 20. 1767. Lord Northington to the Duke of Grafton, expressing his devotion to the King.

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and, without a compliment, never with so much pleasure as when your Grace is at the head of it."*

Aug. 3. 1767. Same to same, describing his debilitated condition.

Being still pressed by the Duke of Grafton, in the King's name, at least to defer his resignation till the administration might be remodelled, he wrote back: "You are pleased to open the immediate plan of carrying on government in the interim till a better can be formed. . . . . . I also learn from your Grace's letter that in his Majesty's present situation it is his wish, and your Grace seems to think it will be a convenience, that I should for a time retain the great employment which his Majesty, out of his abundant grace, was pleased to confer on me. I can have but one answer to that, which I must entreat your Grace to lay at the King's feet, 'That I am so sensible of the many and never-to-be-forgotten marks of the King's favour, proceeding from the greatness of his royal mind, which it hath been my good fortune to have received,— that I am disposed to stand wherever I can be of use to his Majesty's affairs till he can model his administration to his best approbation,—and this with all zeal, duty, and cheerfulness.' That, however, I may conceal nothing, I must inform your Grace that I write this from my bed, having been yesterday seized with the gout in my head, which continued till within this hour, with exquisite pain, and is intermitted so as to enable me to write; that yet I think myself better than when I left London, and hope to be able, at no inconvenient distance, to be in London long enough to despatch any business that may wait me at Council. But it will be a fortnight before I can use my own house, and in my present state of health I know not where else to lodge. I have thus

Duke of Grafton's character of Lord Northington.

* The Duke, in his Journal, after setting out his own composition *in extenso*, thus proceeds: "It will be proper also to introduce here Lord Northington's answer: We lived in full and mutual confidence in each other: he had about him the genuine principle of a Whig[1], and in all transactions I found him to be a man full of honour, a disinterested gentleman, and, though much devoted to the King, with great zeal for the constitution. As a lawyer, his knowledge and ability were great; but his manner and speech were ungracious. I shall ever do honour to his memory wherever I hear his name brought forward.

[1] I should be curious to know the definition of a Whig, which would include Lord Northington, who might be a very sound politician, but was as little of a Whig as his successor Thurlow.

answered your Grace with much difficulty, and with a total resignation of myself to the King's commands; and I have only to add, that my wishes for and support of your Grace's honour and glory, will always wait upon you."

Aug. 9. 1767. Same to same, on the government of Canada, &c.

The Duke of Grafton expressed great satisfaction at the prospect of his retaining office, and sent for his consideration a large bundle of papers respecting the new constitution for Canada. Lord Northington in answer said: "My eyes would not permit me to write to your Grace by the last post, as I intended, with respect to the affairs of the Canada legislation, and to inform you fully of my ideas on that business. I must first premise that the formation of any plan of that kind can never commence or proceed through the office that I now enjoy, in whatever hands it shall be placed; because the Council cannot correspond with any of the King's officers there, to know the true state of that country, which correspondence resides alone in the Secretary of State. When such information is acquired by him, I am of that opinion, that before a plan can be formed, which must necessarily have the sanction of parliament, it is necessary to have the full sense of the King's servants upon that subject, that the measures may have the general support of government, and not be thrown, as they were last year, upon one person not in the least responsible for them. When every information is obtained, I am certain your Grace's penetration anticipates the difficulties to be encountered, from the civil constitution of that province, composed of French received under a capitulation incorporated with English entitled to a legislation at some time, and who have been encouraged to call for it, by the proclamation, the King's commission, and other excitements. To this as great a difficulty succeeds with regard to a Popish hierarchy, and, of course, a Protestant one; both of which are, in my opinion, delicate subjects: loads too heavy to be sustained by any strength less than that of a concurring administration. I have all along been of this opinion in different administrations, and have been willing to lend my

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aid to this difficult task. I hope to be able to be in London in about ten days, though I am very indifferent still." *

Lord Northington accordingly came to town and remained there a few days; but, from a fresh access of his disorder he was soon again obliged to retire to the Grange, where he experienced a little respite from his sufferings.

Lord Northington resigns.

At last, on the 23d of December, 1767, at his earnest entreaty, his resignation was accepted, and Granville Levison Earl Gower was appointed President of the Council in his stead. †

His improved health.

Being relieved from the anxieties of office, he rallied considerably, although it had been thought that his last hour was at hand. In the course of the following year he was so much better that an effort was made to induce him to re-enter the cabinet. The Duke of Grafton says, in his Journal: — "Hoping that Lord Northington might have considered himself still equal in health to the business of the Privy Seal, his Majesty, in the first instance, made the offer to his Lordship, but which he declined on reasons which were very satisfactory to the King."

He declines an offer to be made Lord Privy Seal.

The Premier still continued to consult him on public affairs. The following is the last letter of his in my possession, and expresses his sentiments characteristically on the subject of the Middlesex election, which now intensely agitated the public mind:

"Grainge, 10 Dec. 1769.

Lord Northington to the Duke of Grafton in reference to Wilkes.

"My Lord,

"I had the honour of your Grace's by last Sunday's post. I was that day attacked by the gout, and not able to write till now. I am not surprised your Grace expresseth so strong

* It has been said, that this letter proves "that a good Chancellor and great lawyer could write in the language, and with the eloquence, as well as propriety, which might better become a common housemaid." — *Law Review*, No. 4. It is marvellous, to be sure, to observe his utter disregard of the common rules of composition.

† Lord Henley represents that Lord Northington finally retired in June, 1767, (Life, 54.) but I have fixed the date by a reference to the books of the Privy Council.

a feeling of the distraction of the times. I have long entertained the same opinion of it, and of its tendency so dangerous to the vitals of this valuable constitution. But, my Lord, the distraction hath so long raged, hath been so much fomented, and in its attack of the supreme power of the nation (the Parliament I mean) so much neglected (wisely I must suppose), that it is scarce decent or safe now for an individual to open his sentiments on the subject. Yet it is now come to that pass that it seems totally impossible for the P. to meet and not vindicate its own honour. Doth it want power? Doth it want advice? Thank God the contest is there. Your Grace supposeth I have no idea of the backwardness and lukewarmness of some from whom the K. might expect advice and assistance in his difficulties. I assure your Grace I have long had an adequate one, and very just sentiments of the persons. In this situation your Grace wishes that I would spend the winter in London, and give my assistance in the House of Lords. My Lord, I have but one answer, I cannot — my health will not enable me to live there this winter, nor if I were there, to attend the House. But, my Lord, were I able, could I? What a figure should I, after the offices I have passed, make, prating on subjects to which I am a total stranger, and on measures in which I do not concur, and about doctrines I know not how adopted. Passive obedience to—a mob! I should, so circumstanced, hurt the service that I have a zeal for,—embarrass your Grace, whom I really honour. Believe me, my Lord, there is nothing to debate upon, — OPORTET AGERE.

"Indeed, my dear Lord, I am advanced in years — my constitution so impaired, that unless I can acquire more strength, must be content to remain the retired, unimportant thing I am.

"In whatever condition, I profess myself to be with equal truth and respect,

"My dear Lord," &c.

During his intervals of ease from his terrible enemy, the gout, he amused himself with making deputy lieutenants, Dec. 10. 1769.

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militia officers, and justices of the peace, and getting his old friends round him,—whom he entertained with old port and old stories.

Lord Northington's amusements in his retirement.

His confessor.

He sunk gradually under his infirmities. When near his end he was reminded of the propriety of his receiving the consolations of religion, and he readily agreed that a divine should be sent for; but when the Right Rev. Dr. ——, with whom he had formerly been intimate, was proposed, he said, "No! that won't do. I cannot well confess to him, for the greatest sin I shall have to answer for was making him a Bishop!" The clergyman of the parish was substituted, and the dying Ex-chancellor joined in the ceremonies prescribed by the Church for such a solemn occasion with edifying humility and devotion. Having, in *characteristic language*, tenderly taken leave of his weeping daughters, he expired on the 14th of January, 1772, in the 64th year of his age. His remains were interred in the church at Northington, where is to be seen a monument,

His death.

His monument.

"Sacred to the Memory of
Robert Henley, first Earl of Northington;
Jane, Countess of Northington, his Wife;
And of Robert, Earl of Northington, their only surviving Son."

The inscription, after warmly praising the virtues of all the three, thus concludes:—

"This monument is erected, as a tribute of respect and affection to their parents and their brother, by the R. H. Lady Bridget Tollemache, the R. H. Lady Jane Aston, Mary Viscountess Wentworth, and the R. H. Lady Elizabeth Eden."

His descendants.

His children may well be excused for piously recording their opinion of the "consummate ability" as well as "inflexible integrity," with which he discharged the duties of all the offices which he filled, but the impartial biographer is obliged to form a more discriminating estimate of his merit.

His character.

Endowed with good natural abilities, and possessing very aimable qualities, he was a mere lawyer, seeking only his own advancement, and, though unstained by crimes,—unembellished by genius or by liberal accomplishments—nor very solicitous about the public welfare or even his own fame.

Much praise has been bestowed upon him for consistency as a politician. He certainly was always very faithful to

Leicester House, and to the *clique* called the "King's Friends," which sprang out of that connection. But it is difficult to say what the principles were by which he is supposed to have been guided. He seems never to have originated any of the measures of his political associates, but to have been always ready in a very zealous manner to defend such as they favoured. He turned out a strong Tory and coercionist, but I apprehend that he would have been as strong a Whig and reconciliationist if the liberal side had been taken by Lord Bute and George III. During the Rockingham administration he could only be considered a spy in the enemy's camp.

As a Judge.

He is much more respectable as a Judge. He was not only above all suspicion of corruption or partiality, but, though by no means a profound jurist, his mind was well imbued with the principles of our municipal law; he disposed very satisfactorily of the routine business of his Court, and he could do considerable justice to any important question which arose before him. His judgments are at least remarkably clear, and if they have not the depth they are free from the verbosity and tortuosity of Lord Eldon's, which, dwelling so minutely upon the peculiarities of each case, often leave us in doubt how he has disposed of the points argued before him, and what general rule he means to establish. I do not think that the number of decrees reversed on appeal can be adopted as a criterion of the merits of a Chancellor; and had Lord Northington been raised to the peerage when he received the Great Seal, and had he, like Lord Hardwicke, been the only law Lord, he might possibly have received the same character for infallibility. But, independently of the decisions of the House of Lords against him, the printed reports confirm the tradition, that his boldness in declaring his opinion was not quite equalled by his care and caution in forming it. He may, perhaps, be advantageously contrasted with Judges we have read of, who, desperately afraid of committing themselves,—that they may keep out of scrapes, defer giving judgment till both parties are ruined.

Not a law reformer.

I am sorry that I can say nothing for him as a law reformer. But, although he never dreamed of making any

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attempt to render proceedings in the Court of Chancery cheaper or more expeditious, or to improve any of our institutions, no peculiar blame is to be imputed to him, for he lived at a time where the system of optimism, graced by the inimitable Commentaries of Blackstone, prevailed in Westminster Hall, and half a century elapsed before it was doubted that appearance to a subpœna in Chancery must necessarily be enforced by a commission of rebellion — that by the eternal constitution of things, Common Law actions must be commenced by *latitat*, *capias*, or *quo minus*,—or that fraud and trifling violations of property must be checked by the multiplication of capital punishments.

His enjoyments.

Lord Northington is said to have kept up his acquaintance with the Greek and Latin classics, and to have shown some acquaintance with Hebrew. He was singularly unskilled in the composition of English. Indeed, I can discover in him no love of literature, and I should conjecture that when he had got through his official labours he devoted himself to convivial enjoyment or the common gossip of vulgar life. He not only never aimed at authorship, but I do not find that, like Camden, Thurlow, or Wedderburn, he associated with literary men or with artists.

His stories.

His great delight was to find himself in a circle of lawyers, or common-place politicians, and to indulge in boisterous mirth and coarse jocularity. He seems himself to have possessed a rich fund of humour. Many of his sayings and stories used to be repeated by young students, when

'Twas merry in the hall,
And beards wagged all,

but would not be found suited to the more refined taste of the present age. * He likewise indulged in a bad habit which seems to have been formerly very general, and which I recollect when it was expiring — of interlarding conversation with oaths and imprecations as intensitives — even without any anger or excitement.

His habit of swearing.

His morality and piety.

But in spite of these faults into which he was led by the fashion of the times, he was a strictly moral, and even a religious man. He continued to live on terms of the utmost

* I cannot even relate his compliment to the *capacity* of Lady Northington, or to the *bright eyes* of his daughter, Lady Bridget.

affection and harmony with his wife, and he composed two beautiful prayers for her use — one soon after their marriage, and the other on the birth of their second child — proofs of his piety and tenderness, which she regarded with enthusiasm, till the last hour of her existence. In all the domestic relations he deserves high commendation. He was particularly attached to his daughter — Lady Bridget, who, with the most perfect feminine delicacy, inherited his powers of humour, and was celebrated for sprightliness of repartee, as well as for her beauty. She was in the habit of reading for her father, and it is said that she could even extract amusement for the gay society in which she mixed, out of bills, answers, and affidavits; but this must have been in ridiculing the proceedings of the Court, and all concerned with them.

Amiable in domestic life.

Lord Northington, in his person, was a remarkably handsome man—of the middle size—rather thin—but till crippled by the gout, very active and athletic. His portrait, by Hudson, gives him a very agreeable expression of countenance, and represents him, when on the woolsack, with a complexion still fresh and rosy, instead of being, like most of those who have reached this painful elevation, of the colour of the parchment they have pored upon — or like Mr. Surrebutter's, in the Pleader's Guide, with

His person.

> " A certain tinge of copper
> Quite professional and proper." *

He enjoyed the lawyer's blessing, a large family — his wife having brought him eight children, three sons and five daughters. Only one son survived him, Robert, the second Earl, who was at an early age elected one of the members for Hampshire, and continued to represent that county till his father's death. He was a great personal friend and political associate of Charles James Fox, and when the coalition ministry was formed in 1783, he was sent as Lord Lieutenant to Ireland, with Mr. Wyndham for Secretary. He is said to have been likely to have succeeded well in this post from the frankness and popularity of his manners, as well as his good

His descendants.

* Pleader's Guide, Part I. Lecture vi.

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sense and firmness, but he was soon removed from it by the ascendency of the younger Pitt.* He afterwards died at Paris, on his return from Italy, in July, 1786, and having never been married, the title became extinct.†

His present representative.

The daughters all formed high alliances, but they all died without issue, except Lady Elizabeth, married to the eminent diplomatist, Sir Morton Eden, afterwards raised to the Irish peerage by the title of Lord Henley,— whose son, my most valued friend, was the editor of Lord Northington's judgments, and who, having married a lady adorned with every grace and virtue, the sister of Sir Robert Peel, left by her a son, the present Lord Henley, — the representative of his great-grandfather, the Lord Chancellor.

* Preface to Eden's "Reports," xxix. Henley's "Life of Lord Northington," 62—64.

† The epitaph says, that "he was nominated in MDCCLXXXIV to the arduous and distinguished station of Lord Lieutenant of Ireland: where, in times very difficult, he manifested such talents, assiduity, and firmness, as conciliated the love and respect of the nation over which he presided, and gained him the approbation and esteem of his sovereign and his country."

# CHAPTER CXLII.

LIFE OF LORD CHANCELLOR CAMDEN FROM HIS BIRTH TILL THE DEATH OF GEORGE II.

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Great merits of Lord Camden.

I NOW enter on a most pleasing task. The subject of the following memoir was one of the brightest ornaments of my profession, and of my party, for I glory like him in the name of Whig, although, I hope, I have never been reluctant to point out the errors of Whigs, or to praise Tory talent, honour, and consistency. From some of the opinions of Lord Camden I must differ, and I cannot always defend his conduct; but he was a profound jurist, and an enlightened statesman,—his character was stainless in public and in private life, —when raised to elevated station, he continued true to the principles which he had early avowed,—when transferred to the House of Peers, he enhanced his fame as an assertor of popular privileges,—when an Ex-chancellor, by a steady co-operation with his former political associates, he conferred greater benefits on his country, and had a still greater share of public admiration and esteem, than while he presided on the woolsack,—when the prejudices of the Sovereign and of the people of England produced civil war, his advice would have preserved the integrity of the empire—when America, by wanton oppression, was for ever lost to us, his efforts mainly contributed to the pacification with the new republic,—and Englishmen, to the latest generations, will honour his name for having secured personal freedom, by putting an end to arbitrary arrests under general warrants, for having established the constitutional rights of juries, and for having placed on an imperishable basis the liberty of the press.

His family.

Charles Pratt, afterwards Lord Chancellor and Earl Camden, was descended from a respectable gentleman's family that had been long settled at Careswell Priory, near Collumpton, in Devonshire. The first distinguished member of it was

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Lord Chief Justice Pratt, his father.

his father, Sir John Pratt, who was an eminent barrister in the reigns of William III. and Queen Anne,—gained considerable reputation by supporting the Whigs in the House of Commons as representative for Midhurst,—at the accession of George I. was appointed a puisne Judge of the King's Bench, and in 1718 succeeded Lord Macclesfield as Chief Justice of that Court. The most famous decision in his time was respecting the right of a widow who had married a foreigner to claim parochial relief after his death from the parish in which she was born—thus reported in Sir James Burrow:

"A woman having a settlement
Married a man with none,
The question was, he being dead,
If what she had was gone?

"Quoth Sir John Pratt, the settlement
Suspended did remain
Living the husband, but him dead,
It doth revive again."

*Chorus of puisne Judges.* ——"but him dead,
It doth revive again." *

He likewise drew upon himself a great share of public attention by the able manner in which he conducted the trial of the famous Christopher Layer for high treason †, and by his decided opinion in favour of George I. respecting the Sovereign's control over the education and marriage of his grandchildren. ‡

Birth of Charles Pratt.

He was twice married, and had a very numerous family. Charles was the third son by the second wife, daughter of the Reverend Hugh Wilson, a canon of Bangor, and was born in the last year of the reign of Queen Anne. Of his boyhood little is recorded, except that, from his quickness and love of reading, he was considered a lad of promise, and that, from his cheerful and affectionate temper, he was a great favourite among his companions.

When only ten years old, he had the misfortune to lose his father; but this was probably the remote cause of his future eminence. While he was studying the law, and

* Burr. Sett. Cas.; Burn's Just. tit. "Settlement."

† 16 St. Tr. 93.

‡ 15 St. Tr. 1195.

young at the bar, the run of the house of the Chief Justice of England, with the chance of sinecure appointments, would have been very agreeable, but would probably have left him in the obscure herd to which the sons of Chancellors and Chief Justices have usually belonged. His mother intimated to him that the small amount of his patrimony would do little more than, with good management, defray the expence of his education, and that by his own exertions he must make his way in the world.

At Eton.

He was soon after sent to Eton, and on account of the reduced circumstances of his family, he was placed upon the foundation. But in those days the collegers and oppidans were on the most friendly footing, and here he formed a friendship which lasted through life, and not only led to his advancement, but was of essential benefit to the state — with William Pitt,—then flogged for breaking bounds — afterwards the "Great Commoner" and EARL OF CHATHAM. He likewise had for his playmates Lyttleton and Horace Walpole. At that time, as now, Eton, from its many temptations and gentle discipline, was very ill adapted to a boy idly inclined; yet it was the best school of manly manners, and in the studious the genius of the place fanned the flame of emulation, and inspired a lasting love of classic lore. Fortunately, young Pratt was eminent in the latter category, and here not only was his taste refined, but from his lessons in Livy, and a stealthy perusal of Claudian, he imbibed that abhorrence of arbitrary power which animated him through life.

Oct. 1731. At Cambridge.

At the election in July, 1731, he got "King's," and in the following term he went to reside at Cambridge. Being from his earliest years destined by his father to the bar, he had previously been entered of the Society of the Inner Temple.* While at the university he did not much meddle with the mathematical pursuits of the place, or even very diligently attend classical lectures, being, from the preposterous privilege of his college, entitled to a degree without examination; but while most of his Etonian friends sank into indolence, he not only diligently read the best Greek and

* His admission is dated 5th June, 1728. He is designated "Carolus Pratt, generosus, filius quintus honorabilissimi Joannis Pratt, Eq.," &c.

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Latin authors in his own way, but he began that course of juridical and constitutional study which afterwards made his name so illustrious. It is said that while he was an undergraduate several controversies arose in the college respecting the election of officers, and the enjoyment of exclusive privileges, and that he always took the popular side, opposing himself to the encroachments of the master with as much warmth and perseverance as he afterwards displayed on a wider arena.*

At the Temple.

In 1735, he proceeded B. A. as a matter of course, and having finished his academical curriculum, took chambers, and began to keep his terms in the Inner Temple. I have not been able to learn any thing of his habits during this period of his life, but from what followed it is quite clear that he had been much more solicitous to qualify himself for business, than to form any connexions for obtaining it; and I suspect that, contented with hard reading and a diligent attendance to take notes in Westminster Hall, he did not even condescend to become a pupil in an attorney's office, which had become a common practice since "*moots*" and "*readings*" had fallen into disuse, and "*special pleaders*" had not yet come up. He was called to the bar in Trinity Term, 1738.

Called to the bar.

He is long without business.

But very differently did young Pratt fare from the man whose rapid career had recently been crowned by his elevation to the woolsack. Yorke, the son of an attorney, himself an attorney's clerk, and intimate with many attorneys and attorneys' clerks, overflowed with briefs from the day he put on his robe, was in full business his first circuit, and was made Solicitor General when he had been only four years at the bar. Pratt, the son of the Lord Chief Justice of England, bred at Eton and Cambridge, the associate of scholars and gentlemen, though equally well qualified for his profession, was for many years without a client. He attended daily in the Court of King's Bench, but it was only to make a silent bow when called upon "to move;"—he sat patiently in chambers, but no knock came to the door, except that of a dun,

* This reminds me of a story I have heard of a very distinguished contemporary, who is said, when he was entitled to *fags* at Eton, to have summoned them before him and formally to have *emancipated* them.

or of a companion as briefless and more volatile. He chose the Western Circuit, which his father used to "*ride*," and where it might have been expected that his name might have been an introduction to him,—but spring and summer, year after year, did he journey from Hampshire to Cornwall, without receiving fees to pay the tolls demanded of him at the turnpike gates, which were then beginning to be erected. During the summer circuit, in the year 1741, his nag died, and from bad luck, or from the state of his finances, he was only able to replace him by a very sorry jade. With difficulty did he get back to London—whence he thus wrote to a friend: —"Alas! my horse is lamer than ever, — no sooner cured of one shoulder than the other began to halt. My losses in horse flesh ruin me, and keep me so poor that I have scarce money enough to bear me in a summer's ramble; yet ramble I must if I starve to pay for it."

His despair.

To cheer him up, his school and college friend, Sneyd Davies, addressed to him a poetical epistle, in which the poet dwells upon the worthlessness of the objects of human ambition, and points out to him the course of the bright luminaries then irradiating Westminster Hall:

Poetical address to comfort him.

A.D. 1745.

"Who knows how far a rattle may outweigh
The mace or sceptre? But as boys resign
The play-thing, bauble of their infancy,
So fares it with maturer years: they sage,
Imagination's airy regions quit,
And under Reason's banner take the field,
With resolution face the cloud or storm,
While all their former rainbows die away.
Some to the palace, with regardful step
And courtly blandishment, resort, and there
Advance obsequious; — in the senate some
Harangue the full-bench'd auditory, and wield
Their list'ning passion (such the power, the sway
Of Reason's eloquence!) — or at the bar,
Where Cowper, Talbot, Somers, Yorke before
Pleaded their way to glory's chair supreme,
And worthy fill'd it. Let not these great names
Damp, but incite; nor Murray's praise obscure
Thy younger merit. Know, these lights, ere yet
To noonday lustre kindled, had their dawn.
Proceed familiar to the gate of Fame,
Nor think the task severe, the prize too high
Of toil and honour, for thy father's son." *

He persevered for eight or nine years; but, not inviting attorneys to dine with him, and never dancing with their

He resolves to go into the church.

* Dodsley's Collection, vol. vi.

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daughters, his practice did not improve, and his "*impecuniosity*" was aggravated. At last he was so much dispirited that he resolved to quit the bar,—to return to the seclusion of his college,—to qualify himself for orders,—and to live upon his fellowship as he might,—till, in the course of time, he should be entitled to a college living,—where he might end his days in peace and obscurity. This plan he certainly would have carried into execution, if he had not thought that it was fit he should announce it to the leader of his circuit, who had always been kind to him. This was Henley, afterwards Lord Northington, who, first in his usual jesting manner, and afterwards with seriousness and feeling, tried to drive away the despair which had overwhelmed his friend, and prevailed so far as to obtain a promise that Pratt would try one circuit more.*

Advice to him from Henley (Lord Northington).

At the first assize town on the next circuit, it so happened that Pratt was Henley's junior (by contrivance it was suspected) in a very important cause, and that just as it was about to be called on the leader was suddenly seized with an attack of gout, which (as he said) rendered it necessary for him to leave the Court and retire to his lodgings. The lead was thus suddenly cast upon Pratt, who opened the plaintiff's case with great clearness and precision, made a most animated and eloquent reply, obtained the verdict, was complimented by the Judge, was applauded by the audience, and received several retainers before he left the hall. His fame travelled before him to the next assize town, where he had several briefs,—and from that time he became a favourite all round the Circuit.† Although Henley continued senior of the "Western"

His first speech.

His sudden success.

* I find in the *European Magazine* for July, 1794, a supposed account of the dialogue between them, which I consider entirely fictitious. Here is a specimen of it. "Henley heard him throughout with a seeming and anxious composure, when, bursting out into a horse-laugh, he exclaimed, in his strong manner, 'What! turn parson at last! No, by G——, Charles, you shan't be a P—— neither! You shall do better for yourself, and that quickly too. Let me hear no more of this canting business of turning parson: you have abilities that run before us all, but you must endeavour to scour off a little of that d——d modesty and diffidence you have about you, to give them fair play.'" The writer knew so little of Pratt's real history as to represent that he was afterwards introduced for the first time by Henley to Pitt.

† My friend Mr. Dampier, Judge of the Stannary Court, writes to me — "Sir James Mansfield, who was of K. C., and ab[t] 19 years jun[r] to L[d] C., used to tell me that he remembered L[d] C. on the West. Circuit, and that his rise was

for several years longer, till he was made Attorney General, Pratt's success was facilitated by an opening from the removal of two inferior men, who had long engrossed a great share of the business. Employment in Westminster Hall soon followed; for in new trials and other business connected with the Circuit, he displayed such great ability and such a thorough knowledge of his profession, that in cases of weight he was soon eagerly sought after to hold "second briefs," although he never seems to have had a great share of routine business,— which, with less eclat, is attended with more profit.*

July 6. 1752. He is counsel for the defendant in a prosecution ordered by the House of Commons.

The first case in which he attracted the general notice of the public, was in the memorable prosecution of a printer by Sir Dudley Ryder as Attorney General, under the orders of the House of Commons, in consequence of some remarks on their commitment of the Honourable Alexander Murray for refusing to kneel at their bar. Lord Chief Justice Lee, the presiding Judge, intimated his opinion that the jury were only to consider whether the defendant published the alleged libel (which was clearly proved to have been sold by him in his shop at the Homer's Head in Fleet Street), and whether "the S—r" meant "the Right Honourable Arthur Onslow, the Speaker of the House of Commons," and "the H—h B—ff" meant "Peter Leigh, gentleman, then High Bailiff of the city of Westminster?" Pratt was junior counsel for the defendant, and following Ford, a distinguished lawyer in his day, whom he greatly eclipsed, he showed that *ex animo* he entertained the opinion respecting the rights of juries which he subsequently so strongly maintained against Lord Mansfield, and for which, after a lapse of forty years, he triumphantly struggled against Lord Thurlow in the last speech he ever delivered in parliament. He told the jury that they were bound to look to the nature and tendency of the supposed libel, and to acquit the defendant, unless they believed that he intended by it to sow sedition, and to subvert the

His assertion of the right of the jury to consider the character of the publication charged to be a libel.

very sudden and rapid, after a long time of no practice; but once having led a cause in the west, he became known, and was immediately in full business, on the Circuit."

* His name does not occur in the Reports nearly so frequently as those of some others who are long since forgotten.

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constitution in the manner charged by the prosecutors. "Are you impannelled," said he, "merely to determine whether the defendant had sold a piece of paper value two-pence? If there be an indictment preferred against a man for an assault with an intent to ravish, the intent must be proved; so if there be an indictment for an assault with intent to murder, the jury must consider whether the assault was in self-defence, or on sudden provocation, or of malice aforethought? The secret intention may be inferred from the tendency; but the tendency of the alleged libel is only to be got at by considering its contents and its character; and, because "S—r" means "*Speaker*," and "h—h-b—ff" means "*high-bailiff*," are you to find the defendant guilty, if you believe in your consciences that what he has published vindicates the law, and conduces to the preservation of order?" He then ably commented upon the absurdity of this prosecution by the House of Commons, who arbitrarily and oppressively abusing the absolute power which they claimed, would not even tolerate a groan from their victims. Said he, "There is a common proverb, — and a very wise Chancellor affirmed that *proverbs are the wisdom of a people*,—LOSERS MUST HAVE LEAVE TO SPEAK. In the Scripture, Job is allowed to complain even of the dispensations of Providence, the causes and consequences of which he could not comprehend. As complaints are natural to sufferers, they may merit some excuse where the infliction is by the act of man, and to common understandings seems wanton and tyrannical. A gentleman of high birth and unblemished honour is committed to a felon's cell in Newgate, because, being convicted of no offence, he refuses to throw himself before those, for whom he did not feel the profoundest respect, into that attitude of humility which he reserved for the occasion of acknowledging his sins, and praying for pardon before the throne of the Supreme Ruler of the Universe. Must all be sent to partake his dungeon who pity his fate? The Attorney General tells a free people that, happen what will, they shall never complain. But, gentlemen, you will not surrender your rights, and abandon your duty. The fatal blow to English liberty will not be inflicted by an English jury."

The Attorney General having replied, and Lord Chief Justice Lee having reiterated his doctrine, by which every thing was to be reserved to the Court, except *publication* and *innuendoes*, the jury retired, and, being out two hours, returned a general verdict of NOT GUILTY. When the Attorney General could be heard, after the shout of exultation which arose, he prevailed upon the Chief Justice to call back the jury, who were dispersing, and to put this question to them:—"Gentlemen of the jury, do you think the evidence laid before you of the defendant's publishing the book by selling it, is not sufficient to convince you that the said defendant did sell this book?" The foreman was at first "a good deal flustered;" but the question being repeated to him, he said, in a firm voice, all his brethren nodding assent, "Not guilty, my Lord; not guilty! That is our verdict, my Lord, and we abide by it!" Upon which there was a shout much louder than before; and the Court broke up.* The controversy respecting the rights of juries was not settled till the passing of Mr. Fox's libel bill in 1792; but after this expression of public feeling, the practice of requiring persons summoned to the bar for breach of privilege to fall down on their knees was discontinued by both Houses of Parliament.†

He obtains the verdict in spite of the Judge.

For several years Pratt went on steadily in the ordinary progress of a rising lawyer. Without a silk gown he was now one of the leaders of the Western Circuit, and being considered peculiarly well read in parliamentary law, he was the favourite in all cases of a political aspect. He had a great share of election business before the House of Commons, which for the present he preferred to a seat in that assembly.

From some cause not explained (some uncharitably said from the apprehension that he might rival the Honourable C. Yorke, now making a distinguished figure at the bar) he was not a favourite with the Chancellor, but he was at last made a King's counsel, upon a report which he never authorised,

He receives a silk gown.

* 18 St. Tr. 1203—1230.

† On the trial of a Peer for felony it is still put down in the programme,—that is, "to kneel when arraigned;" but this ceremony is not insisted on in practice.

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that he intended permanently to practise in the Court of King's Bench. When with his silk gown he went over to the Court of Chancery, as eminent counsel then sometimes did, and he was actually beginning to interfere with Charles Yorke, he was treated with great civility, but with marked disregard by Lord Hardwicke, who plainly, though not tangibly, showed that he never listened to any thing which Pratt said.*

His intimacy with Mr. Pitt.

I do not find that he attached himself to any particular section in politics, but he was on a footing of familiar intimacy with the great Whig chiefs, particularly with his old school-fellow Pitt, who was in the habit of consulting him respecting questions of a legal or constitutional nature which from time to time arose.

Happy period of his life.

He was likewise in the constant habit of associating with artists and men of letters. Although he did not yet enjoy the sweets of domestic life, this must have been an agreeable portion of his existence, for, free from the anxieties of office, he had achieved an enviable station in society, the pleasures of which were enhanced by recollecting the despair into which he had formerly been plunged; he was courted by friends and respected by opponents; highly satisfied with the present, he had brilliant prospects before him. The disgrace brought upon the country by the imbecility of the government might disquiet him; but his solicitude was mitigated by the consideration that this government was becoming daily more unpopular, and that it might be replaced by one patriotic and powerful, in which he himself might be called to take a part.

July, 1757. He is made Attorney General.

At last Mr. Pitt was at the head of affairs with dictatorial authority. Resolved, both on public and private grounds, that his old Etonian friend should now be provided for, he thought it might be too strong a measure at once to give the Great Seal to a man at the bar, who had never been a law officer of the Crown, nor had sat in Parliament; but he declared that Pratt should be Attorney General in the place of Sir Robert Henley, who was to be made Lord Keeper. Against this arrangement Charles Yorke, who had been

* On the authority of Sir James Mansfield, from the relation of Lord Camden himself. He added that "Lord Mansfield so enlarged the practice of K. B. that counsel did not leave his Court."

appointed Solicitor General the November preceding, and whose father was mainly instrumental in constructing the new ministry, strongly protested, as derogatory to his rights and his dignity; but Pitt was firm, maintaining that, from standing at the bar and merit, Pratt ought long ago to have been raised to the honours of the profession. Yorke, although in a manner very ungracious, and although still retaining a grudge against Pratt for this supposed slight, agreed to serve under him as Solicitor. — Mr. Attorney received the honour of knighthood.

He is returned to parliament for Downton.

In those days the law officers of the Crown had no anxiety about a seat in Parliament; they were not driven to canvass popular constituencies, with the danger of being thrown out, and the certainty of a large hole being made in their official earnings. Sir Charles Pratt was put in for the close borough of Downton, which he continued to represent without trouble or expence till he was made Chief Justice of the Court of Commons Pleas.

He now flourished in the Court of Chancery, and he was an overmatch for the heavy Equity pleaders who for twenty years had been sleeping over "Exceptions" and "Bills of Revival." *

His marriage.

To share his prosperity and to solace his private hours, now that he was too much occupied to go into general society, he, though "on the shady side of forty," resolved to take a wife. The courtships of some of my Chancellors have been amusing; but, having to *relate*, not to *invent*, I can only say of this union, (which I believe to have been highly prudent and respectable, but quite unromantic,) that the lady of his choice was Elizabeth, daughter and coheir of Nicholas Jefferys, Esq., of Brecknock Priory, who brought considerable wealth into the family, and in compliment to whom one of its titles was afterwards selected. They are said to have lived together in great harmony and happiness; but throughout the whole of Lord Camden's career we have to regret that very few personal or private anecdotes of him have been

* During the four years that he afterwards practised in this Court, there is hardly a reported case in which his name is not mentioned as counsel. — See *Eden's Rep.* temp. Northington.

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handed down to us. We must be contented with viewing him on the stage of public life.

It is a curious fact, that although he was afterwards such a distinguished orator in the House of Lords, — during the whole time that he sat in the House of Commons his name is not once mentioned in the printed parliamentary debates. This arises partly from the very imperfect record we have of the proceedings of the Legislature during this period of our history, there being only one octavo volume for the twelve years from 1753 to 1765,— partly from the cessation of factious strife during Mr. Pitt's brilliant administration, and partly from Pratt's style of speaking being rather too calm and ratiocinative for the taste of the Lower House, — so that while he remained there he was merely considered "*par negotiis, neque supra,*" — equal to carrying through the law business of the government, and fit for nothing more,— no one dreaming that hereafter he was to rival Chatham, and that Mansfield was to quail under him.

His bill to amend the Habeas Corpus Act.

The only occasion when he seems to have attracted much notice as a representative of the people was in bringing forward the excellent bill — which unfortunately proved abortive — for amending the "Habeas Corpus Act," in consequence of a decision that it did not apply, unless where there was a charge of *crime* — so that in many instances persons illegally deprived of their liberty by an agent of the Crown could not have the benefit of it. Horace Walpole tells us, that "the Attorney General declared himself for the utmost latitude of the habeas corpus," and adds, that "it reflected no small honour on him, that the first advocate of the Crown should appear as the first champion against prerogative." The bill having easily passed the Commons, where it was warmly supported by Pitt, was (as I have had occasion to mention elsewhere) *, rejected by the Lords, in deference to the opinion of the "Law Lords," who then opposed all improvement, and likewise to gratify the strong prejudices of the King, who had openly declared against it, and who, throughout the whole course of his reign, most conscientiously

* Ante, p. 147.

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and zealously opposed every measure, domestic or colonial, that had in it the slightest tincture of liberality.*

His state prosecutions when Attorney General.

Pratt, while Attorney General, conducted two government prosecutions, — still professing and acting upon the great principles of justice for which he had so boldly struggled when defending those who had been prosecuted by his predecessors. The first was against Dr. Hensey for high treason in corresponding with the king's enemies, and inviting them to invade the kingdom. The trial took place at the bar of the Court of King's Bench, before Lord Mansfield and the other Judges of that Court. Mr. Attorney, in opening the case to the Jury, having read several letters which had been written by the prisoner to the French government during the war, and which he contended were treasonable, said, "These letters, and translations of them being laid before you, you, gentlemen, will be proper judges of their destructive tendency; indeed (under the sufferance of the Court) you are the only judges of this fact. Proof being given that they are in the handwriting of the prisoner, and were sent off by him, — if you are of opinion, from a fair construction of their contents, that his object was to solicit and to encourage the landing of a French army on our shore, then he is guilty of the crime laid to his charge by this indictment; — but otherwise it will be your duty to acquit him, whatever opinion you may form of his character, and whatever suspicions you may entertain of his conduct." — The Jury having found a

Rex v. Hensey, for treason.

The House of Lords at present in advance of the House of Commons as to legal reform.

* It is a curious fact, that, with regard to law reform, the two Houses have recently changed characters. I will not presume to praise the assembly to which I have now the honour to belong, as far as politics may be concerned, but in jurisprudential legislation, I say boldly, they are greatly in advance of the other House — which has become the great obstacle to improvement. I will give a few instances. The late Libel Bill (generally called in Westminster Hall "Lord Campbell's Libel Bill"), which originated in the House of Lords, was deprived in the House of Commons of its most important clauses for the protection of private character and the liberty of the press. In the Session of 1845 the House of Commons threw out bills, which, being approved of by the Lord Chancellor and all the law Lords, had passed the House of Lords unanimously—1. To abolish "Deodands," that disgraceful remnant of superstition and barbarism; 2. To allow a compensation to be obtained by action where a pecuniary loss is sustained from death caused by the negligence of another, so that a railway company might be compelled to make some provision for orphans whose father has been killed by their default; and, 3. To permit actions to be commenced against persons who, having contracted debts in England or Ireland, have gone abroad to defraud their creditors, and there spend the funds remitted to them from home, — which at present the law cannot touch.

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verdict of "*guilty*," the Attorney General consented that the day for the execution should be appointed at the distance of one month. The prisoner, after being several times respited, was finally pardoned — a striking instance of the clemency of the government, and a strong contrast with the execution of Byng under the late administration.*

June 18, 1758. Rex *v.* Shibbeare. for libel.

The only *ex officio* information which he filed was against Dr. Shibbeare for a most seditious and dangerous publication, entitled, "A Letter to the People of England," containing direct incentives to insurrection. Horne Tooke, no enemy to the liberty of the press, approves of the prosecution, saying, that "if ever there was an infamous libel against the government, surely it was that." † The trial came on in Westminster Hall before Lord Mansfield. In opening the case to the Jury, the Attorney, although using rather quieter language, adhered to the doctrine for which he had struggled with such brilliant success in his first great speech in the *King* v. *Owen*, and expressly told the Jury that he desired them, besides the evidence of publication, and the *innuendoes*, to consider the language of the libel, and not to find a verdict for the Crown, unless they were convinced that it had a direct tendency to a subversion of the public tranquillity — from which they might fairly infer that the defendant published it "maliciously and seditiously," as charged in the information; but he added, that "he did not wish for a conviction if any man in the world could entertain a doubt of the defendant's guilt." At the distance of many years, he stated with pride in his speech in the House of Lords on Fox's libel bill, the marked manner in which he had intimated his opinion to all the world, "that the criminality of the alleged libel was a question of fact with which the Court had no concern. ‡ "

A. D. 1760. He conducts the prosecution against Lord Fer-

Pratt conducted with the same propriety the prosecution of Lord Ferrers for murder before the House of Lords. Thus he opened, with touching simplicity and candour: — "My Lords, as I never thought it my duty in any case to

* 19 St. Tr. 1342—1382.
† 20 St. Tr. 708.
‡ Annual Register, 1758.

rer for murder.

attempt at eloquence where a prisoner stood upon trial for his life, much less shall I think of doing it before your Lordships; give me leave, therefore, to proceed to a narrative of the facts." These he proceeds to state with great perspicuity and moderation, as they were afterwards fully proved by the witnesses. The labouring oar on this occasion, however, fell to the Solicitor General Yorke, who so ably repelled the defence of insanity.*

The labours of the law officers of the Crown were very light at the close of the reign of George II., for all opposition in parliament was annihilated;—from the universal popularity of a triumphant government, seditious libels were unknown,—and there were no government prosecutions, except in the Court of Exchequer against unlucky smugglers.

* 19 St. Tr. 885.

# CHAPTER CXLIII.

## CONTINUATION OF THE LIFE OF LORD CAMDEN TILL HE RECEIVED THE GREAT SEAL.

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Change of policy at Court on the accession of George III.

On the demise of the Crown all things for some time went on very smoothly. Pratt prepared the proclamation of George III. His patent as Attorney General was renewed by the young Sovereign, and no great alarm was excited by the circumstance of Lord Bute, who had been groom of the stole to the Prince, being sworn a Privy Councillor. But when this nobleman was made Secretary of State, and began with the air of a royal favourite to interfere actively with the patronage and with the measures of the Government, it was discovered that Whig rule was coming to an end. The Stuarts having fallen into utter contempt, so that the return of their persons was no longer to be dreaded,—there was to be a restoration of their maxims of government. Being of "good Revolution principles," which had been openly stated as a recommendation to office during the two last reigns, now made a man be looked upon at Court very coldly, and "the divine indefeasible right of kings" became the favourite theme,—in total forgetfulness of its incompatibility with the parliamentary title of the reigning monarch. A breaking up of the combination of the few great families, who called themselves "*the Whig party*,"—who had for many years monopolised the patronage of the Crown,—and who had on various occasions exhibited the vices with which they had formerly been in the habit of reproaching the Tories,—would have been a most laudable exploit;—but unfortunately the Sovereign was determined to transfer power from one faction kept in check by professing liberal principles, to another imbued with a love of absolutism,—although the leaders of it while in opposition had occasionally spoken the language of freedom — which they were now eager to disclaim.

Pratt being resolved to maintain his own principles, happen

what would,—as the proposal to make the Judges irremoveable at the commencement of a new reign, was laudable by carrying into effect the intention of the Act of Settlement,—and as he was not called upon to do any thing in parliament or in Westminster Hall inconsistent with his notions of duty, —he continued in his office of Attorney General even when his chief—strongly condemning the foreign policy now adopted,—had resigned. If he had continued Attorney General till No. XLV. of "The North Briton" was published, he must then have thrown up his office, for he would sooner have thrust his hand into the fire than advised or defended general warrants to seize the printer and publisher, or any of the violent proceedings against Wilkes, which shortly rendered the Government so odious and contemptible, and introduced factious struggles almost unparalleled in our annals.

Pratt continues Attorney General after the resignation of Mr. Pitt.

But in the lull before the storm died Lord Chief Justice Willes, and the Attorney General laid his head upon "the cushion of the Common Pleas." It was rather agreeable to the Sovereign and the ministers that he should be placed in a Court in which it was thought that no political cases could come, and he could do no mischief with his "wild notions of liberty." Accordingly, his patent as Chief Justice was immediately made out; and having qualified himself by submitting to the degree of the coif*, on the 23d of January, the first day of Hilary Term, 1762, he took his seat in the Court of Common Pleas. Here, it so turned out, there were soon more political cases than during many years after came before the Court of King's Bench,—where he would by no means have been trusted. He himself anticipated nothing but repose in his new office; and he really thought that his political life was at an end. Thus he writes to his old friend Davies: "I remember you prophesied formerly that I should be a Chief Justice, or perhaps something higher. Half is come to pass: I am Thane of Cawdor, but the greater is behind; and if that fails me, you are still a false prophet. Joking aside; I am retired out of this bustling world to a place of

He is appointed Chief Justice of the Common Pleas.

His expectations of repose.

* He was called along with Serjeant Burland. *Emblema annuli — Tu satis bobus.* — 2 Wilson, 136.

sufficient profit, ease, and dignity; and I believe that I am a much happier man than the highest post in the law could have made me." He then little expected that before long the prophet might have exclaimed to him, "Thou hast it now, King, Cawdor, Glamis — all!"

He announces his constitutional principles on a point of practice.

Lest he should never have a better opportunity, in the Court of Common Pleas, of proclaiming his adherence to constitutional principles, a question of practice arising during his first term, viz., "whether the Judges could refuse a plea *puis darrein continuance*," the Chief Justice said, "Such discretion is contrary to the genius of the common law of England, and would be more fit for an Eastern monarchy than for this land of liberty. *Nulli negabimus justitiam.*" *

But, ere long, he had to adjudicate upon a case that excited more interest in the public mind than any that had occurred in a court of law since the trial of the Seven Bishops.

Imprisonment of Wilkes.

In the morning of Saturday, 30th of April, 1763, John Wilkes, then member for the borough of Buckingham, was arrested, under Lord Halifax's general warrant to "seize the authors, printers, and publishers of the North Briton, No. XLV., together with their papers." As soon as a copy of the warrant could be obtained, while he was still in his house in Great George Street, in custody of the messengers, Serjeant Glyn, in the Court of Common Pleas, moved for, and obtained for him, a writ of *Habeas Corpus*, returnable immediately, — the Chief Justice observing, "that this was a most extraordinary warrant." The Solicitor to the Treasury, who was present, having reported what had passed to the Secretary of State, Mr. Wilkes, before the writ could be served on the messengers, was committed a close prisoner to the Tower, and the officers of the Secretary of State returned, that "he was not in their custody." On the Monday a *Habeas Corpus* was obtained, directed to the Lieutenant of the Tower.

Question of privilege.

The metropolis was now in a state of almost unparalleled excitement. At the sitting of the Court, on the Tuesday morning, Mr. Wilkes was brought into Court by the Lieutenant of the Tower, who, without noticing in his *Return* the "general

* 2 Wilson, 137. *Paris* v. *Salkeld.*

warrant" under which the arrest took place, merely set out the commitment to the Tower of Mr. Wilkes, as "the author and publisher of a most infamous and seditious libel, entitled the North Briton, No. XLV., tending to inflame the minds, and to alienate the affections of the people, from his Majesty, and to excite them to traitorous insurrections against the government." Thus the question of the legality of general warrants was for the present evaded: but Serjeant Glyn moved, that Mr. Wilkes should be set at liberty, "*first*, on the ground that it did not appear that there had been any information on oath against him before his commitment; *secondly*, that no part of the libel was set forth to enable the Court to see whether any offence had been committed; and, *thirdly*, that he was privileged from arrest as a member of Parliament." After a learned argument by counsel, and a vapouring speech from Mr. Wilkes himself, the Court took time to consider; and, on the Friday following, the Lord Chief Justice Pratt delivered their unanimous opinion, overruling the first two objections, and thus dealing with the last: "The third matter insisted upon for Mr. Wilkes is, that he is a member of Parliament, (which is admitted by the King's Serjeants,) and so entitled to privilege to be free from arrests in all cases, *except treason, felony, and actual breach of the peace;* and we are all of opinion that he is entitled to that privilege, and that he must be set at liberty. The Seven Bishops were most unjustly ousted of their privilege, three of the Judges deciding that a seditious libel was an actual breach of the peace. 4 *Inst.* 25. says, 'the privilege of Parliament holds, unless it be in three cases, viz., treason, felony, and the peace. Privilege of Parliament holds in informations for the King, unless in the cases before excepted.' The case of an information against Lord Tankerville for bribery (4 *Anne*) was within the privilege of Parliament. We are all of opinion, that a libel is not a breach of the peace: it tends to a breach of the peace, and that is the utmost. But that which only tends to a breach of the peace cannot be an actual breach of it. In the case of the Seven Bishops, Judge Powell, the only honest man of the four Judges, dissented, and I am

Lord Camden's judgment for liberating Wilkes.

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bound to be of his opinion, and to say that case is not law — but it shows the miserable condition to which the state was then reduced. Let Mr. Wilkes be discharged from his imprisonment." A great part of the population of London being in Westminster Hall, Palace Yard, and the adjoining streets, a shout arose which was heard with dismay at St. James's.*

Consideration of the question of privilege. Nov. 1763.

As the authorities then stood, I think a court of law was bound to decide in favour of privilege in such a case; but although I must condemn the servile desire to please the King and his ministers, by which both Houses were actuated on the re-assembling of parliament, I cannot but approve the resolution to which they jointly came, and which, I presume, would now be considered conclusive evidence of the law, "that privilege of parliament does not extend to the case of writing or publishing seditious libels." † I do not think that privilege of parliament should, in any respect, interfere with the execution of the criminal law of the country. Little inconvenience arises from the immunity of members of parliament from arrest for debt, and this is necessary to protect them in the discharge of their public functions.

Lord Camden's immense popularity.

The immense popularity which Lord Chief Justice Pratt now acquired, I am afraid, led him into some intemperance of language, although his decisions might be sound. Many actions were brought in his Court, and tried before him, for arrests under general warrants, and the juries giving enormous damages, applications were made to set aside the verdicts, and to grant new trials. It might be right to refuse to interfere, but not in terms such as these: — "The personal injury done to the plaintiff was very small, so that if the jury had been confined by their oath to consider the mere personal injury only, perhaps twenty pounds would have been thought damages sufficient; but the jury saw before them a magistrate exercising arbitrary power over all the King's subjects — violating Magna Charta, and attempting to destroy the liberty

His inflammatory language to uries.

* 2 Wilson, 151—160.; 19 St. Tr. 982—1002.

† 15 Parl. Hist. 1365. — I am not aware whether the privilege was claimed in cases of libel after conviction, so as to prevent sentence of imprisonment. The Earl of Abingdon, and other members of parliament, have since been sentenced to imprisonment for libel without question.

of the kingdom by insisting on the legality of this general warrant; they heard the King's counsel, and saw the Solicitor to the Treasury endeavouring to support and maintain the legality of the warrant in a tyrannical and severe manner. These are the ideas which struck the jury on the trial, and I think they have done right in giving exemplary damages. To enter a man's house under colour of a nameless warrant in order to procure evidence, is worse than the Spanish inquisition — a law under which no Englishman would wish to live an hour; — it was a most daring attack on the liberty of the subject. 'Nullus liber homo capiatur vel imprisonetur, nec super eum ibimus—nisi per legale judicium parium suorum vel per legem terræ.' An attempt has been made to destroy this protection against arbitrary power. I cannot say what damages I should have given if I had been upon the jury."*

Dec. 6. 1763. Wilkes's action for damages tried before Lord Camden.

Mr. Wilkes's own action being afterwards tried before Lord Chief Justice Pratt, he said, "The defendants claim a right, under a general warrant and bad precedents, to force persons' houses, break open escritoires, seize papers where no inventory is made of the things taken, and no persons' names specified in the warrant, so that messengers are to be vested with a discretionary power to search wherever their suspicions or their malice may lead them. As to the damages, I continue of opinion that the jury are not limited by the injury received. Damages are designed not only as a satisfaction to the injured person, but likewise *as a punishment to the guilty, and as proof of the detestation in which the wrongful act is held by the jury.*" † The jury having given 1000*l.*, a bill of exceptions was tendered to the direction — but the Chief Justice refused to receive it, as it came too late after verdict.

Legality of general warrants.

In *Leach* v. *Money* ‡, however, the question as to the legality of general warrants was regularly raised. There Lord Chief Justice Pratt, having given a similar direction, a bill of exceptions was duly tendered and carried by writ of error into the King's Bench. It was in arguing this case that Dun-

* 2 Wils. 206, 207. *Huckle* v. *Money*.
† Ib. 244.; *Beardmore* v. *Carrington*.
‡ 3 Burr. 1692.

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ning laid the foundation of his splendid fame. Lord Mansfield having, in the course of the argument, thrown out an opinion against the legality of the warrant, the Attorney General Yorke contrived to be beaten on a bye point; but, without a formal judgment, general warrants have ever since been considered illegal, although they were sanctioned by a uniform usage of ancient standing in the office of the Secretary of State.*

Legality of warrants to search for papers.

Another very important case was brought before the Court of Common Pleas while Pratt presided there, in which the question was distinctly raised, whether, "on a charge of libel, the Secretary of State may grant a warrant to *search for, seize, and carry away papers;*" and in support of this practice too a long course of precedents was proved. But after protracted arguments the Chief Justice said,—"The warrant was an execution in the first instance without any previous summons, examination, hearing the plaintiff, or proof that he was the author of the supposed libels,—a power claimed by no other magistrate whatever (Scroggs, C. J., always excepted); it was left to the discretion of the defendants to execute the warrant in the absence or presence of the plaintiff when he might have no witness present to see what they did, for they were to seize all papers, bank bills, or any other valuable papers they might take away if they were so disposed. If this be lawful, both Houses of parliament are involved in it; for they have both ruled that, in such matters, they are on a footing with all the rest of the King's subjects. In the case of Wilkes, a member of the House of Commons, all his books and papers were seized and taken away: we were told by one of these witnesses, that 'he was obliged by his oath to sweep away all papers whatsoever.' If this be law, it would be found in our books, but no such law ever existed in this country; our law holds property so sacred, that no man can set his foot on his neighbour's close without his leave. The defendants have no right to avail themselves of the usage of these warrants since the Revolution,—that usage being contrary to law. The Secretary of State cannot make that law which is not to be found in our books. It must have been

* 19 St. Tr. 982—1002.

the guilt or poverty of those on whom such warrants have been executed that deterred or hindered them from contending against the power of a Secretary of State and the Solicitor to the Treasury, as such warrants could never have passed for lawful. It is said to be better for the Government and the public to seize the libel before it is published; if the legislature be of that opinion, they will make it lawful. As yet our law is wise and merciful, and supposes every man accused to be innocent till he is tried by his peers and found guilty. Upon the whole, we are of opinion that this warrant is wholly illegal and void."*

Pratt, while a common law Judge, certainly was of signal service to his country. He not only arrested some flagrant abuses in his own time, but he laid down principles upon which other flagrant abuses still continuing, such as the opening of private letters at the post-office by order of the Secretary of State, may still be reached and remedied.

Lord Camden's non-political decisions while Chief Justice of the Common Pleas.

It would appear from the Reports, that there were few cases of importance, not of a political nature, debated in the Common Pleas while Pratt was Chief Justice. The most important, perhaps, was *Doe* v. *Kersey* †, in which he maintained, in opposition to the other Judges of his own Court, and also to a unanimous decision of the King's Bench, that witnesses to a will must be disinterested when they attest it, and that it is not enough that their interest is removed before they come to prove it; but though he was overruled, the legislature adopted his opinion, by enacting that the moment of attestation is the period to regard in considering their credibility. In no other case was there a final difference between him and his brethren on the bench, and all his contemporaries unite in bearing testimony to the combination of dignity, impartiality, and courtesy with which he presided over the proceedings of his Court. ‡

After the liberation of Wilkes, and the condemnation of "general warrants" and "search warrants for papers," he be-

* *Entick* v. *Carrington*, 19 St. Tr. 1002—1030.

† See *Doe d. Hendson* v. *Kersey*, 4 Burn. Eccl. Law, 97.; *Wyndham* v. *Chatwynd*, 1 Burn. 414.

‡ 2 Wilson, 275—292.; *Entick* v. *Carrington*; 19 St. Tr. 1073.

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His renown at home and abroad.

came the idol of the nation. Grim representations of him laid down the law from sign-posts. Many busts and prints of him were sold, not only in the streets of the metropolis, but in provincial towns and remote villages. A fine portrait of him by Sir Joshua Reynolds, with a flattering inscription, "in honour of the zealous assertor of English liberty by law," was placed in the Guildhall of the city of London. Addresses of thanks to him poured in from all quarters, and most of the great municipalities of the empire presented him with the freedom of their corporations. English journals and English travellers carried his fame over Europe, and one of the sights of London which foreigners went to see, was THE GREAT LORD CHIEF JUSTICE PRATT.

July, 1765. He is raised to the peerage.

On the formation of the Rockingham administration, although the leaders unfortunately consented to have Northington for their Chancellor, they wished to court popularity, and to give a pledge that they meant to follow a different course of policy at home and abroad from their predecessors, who prosecuted Wilkes, and taxed the colonies. Accordingly, their first act was to raise the popular Judge to the peerage, by the style of "Baron Camden, of Camden Place, in the county of Kent." * The property from which he took his title had belonged to the celebrated antiquary of that name, and had passed, through several changes of ownership, into the possession of the Pratts.

The new Peer took his seat in the House of Lords on the first day of the following session, being looked at with a jealous eye both by Lord Northington, who had opposed his elevation, and by Lord Mansfield, who instinctively dreaded a contest for the supremacy which he had enjoyed there since the death of Lord Hardwicke.

His speech on the right to tax the colonies.

I have already mentioned Lord Camden's maiden effort upon the right to tax America, where he was so rudely assailed by the Lord Chancellor. † The declaratory bill being

* The Duke of Grafton, in his "Journal," says, "One of the first acts of our administration was to obtain from his Majesty the honours of a peerage for the true patriot, Lord Chief Justice Pratt, which the King had the condescension to grant to our earnest entreaties; the news of which was received by the nation with much applause." — Part II. p. 47.

† Ante, p. 203.

brought in, he on a subsequent day opposed it in a set speech, upon which he had taken immense pains,— which has been rapturously praised, and some passages of which are still in the mouths of schoolboys, — but which I must acknowledge seems to me to exhibit false reasoning, and false taste. Having begun by alluding to the charge against him, as "the broacher of new-fangled doctrines, contrary to the laws of this kingdom, and subversive of the rights of Parliament," he thus proceeded, "My Lords, this is a heavy charge, but more so when made against one stationed as I am, in both capacities as a Peer and a Judge, the defender of the law and the constitution. When I spoke last, I was indeed replied to, but not answered. As the affair is of the utmost importance, and in its consequences may involve the fate of kingdoms, I have taken the strictest review of my arguments, I have re-examined all my authorities — fully determined if I found myself mistaken, publicly to own my mistake and give up my opinion; but my searches have more and more convinced me that the British parliament has no right to tax the Americans. I shall not criticise the strange language in which your proposed declaration is framed; for to what purpose, but loss of time, to consider the particulars of a bill, the very existence of which is illegal, — absolutely illegal, — contrary to the fundamental laws of nature, contrary to the fundamental laws of this constitution, — a constitution grounded on the eternal and immutable laws of nature, — a constitution whose centre is liberty, which sends liberty to every individual who may happen to be within any part of its ample circumference? Nor, my Lords, is the doctrine new; it is as old as the constitution; it grew up with it; indeed, it is its support; taxation and representation are inseparably united. God hath joined them, no British Parliament can put them asunder; to endeavour to do so, is to stab our very vitals. My position is this—I repeat it—I will maintain it to my last hour—taxation and representation are inseparable; this position is founded on the laws of nature; it is itself a law of nature; for whatever is a man's own, is absolutely his own; no man has a right to take it from him without his consent, either expressed by himself or representative; whosoever

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attempts to do it, attempts an injury; whosoever does it commits a robbery*; he throws down and destroys the distinction between liberty and slavery. Taxation and representation are coeval with, and essential to, the constitution. I wish the maxim of Machiavel were followed—that of examining a constitution, at certain periods, according to its first principles; this would correct abuses and supply defects. To endeavour to fix the æra when the House of Commons began in this kingdom, is a most pernicious and destructive attempt; to fix it in Edward's or Henry's reign, is owing to the idle dreams of some whimsical, ill-judging antiquarians. When did the House of Commons first begin? when my Lords'?—it began with the constitution. There is not a blade of grass growing in the most obscure corner of this kingdom which is not—which was not ever—represented since the constitution began; there is not a blade of grass which, when taxed, was not taxed by the consent of the proprietor." He then examines, at great length, the arguments drawn, by analogy, from Ireland, Wales, Berwick, and the Counties Palatine; and, having treated with merited scorn the miserable crotchet, that America was virtually represented in the House of Commons, he thus concluded: "The forefathers of the Americans did not leave their native country, and subject themselves to every danger and distress, to be reduced to a state of slavery: they did not give up their rights; they expected protection, not chains, from their mother country; by her they believed that they should be defended in the possession of their property, and not despoiled of it. But if you wantonly press this declaration, although you now repeal the Stamp Act, you may pass it again in a month; and future taxation must be in view, or you would hardly assert your right to enjoy the pleasure of offering an insult. Thus our fellow-subjects in America will have nothing which they can call their own, or, to use the

* These words offended George Grenville, the author of the Stamp Act, so much, that he complained of them in the House of Commons, pronouncing them, with great emphasis, to be "a libel upon parliament;" and threatening to bring the printer of the speech to the bar for punishment. But no farther notice was taken of it.—*Almon's Biographical Anecdotes*, i. 377.

words of the immortal Locke, *What property have they in that which another may by right take, when he pleases, to himself?*" *

Doubts as to the soundness of Lord Chatham's and Lord Camden's doctrine on this subject.

Although the Stamp Act was most properly repealed, and nothing could exceed the folly of accompanying the repeal of it with the statutable declaration of the abstract right to tax, I confess I do not understand the reasoning by which, admitting that the British parliament had supreme power to legislate for the colonies, a law passed to lay a tax upon them, though it may be unjust and impolitic, is a nullity. I agree that it may be put upon the footing of an act of attainder, without hearing the party attainted in his defence, or an act to take away a man's private property, without compensation; but could Lord Camden, sitting as a Judge, have held such acts to be nullities — hanging for murder the Sheriff who assisted at the execution in the one case, or in an action of trespass, recognising the property of the original owner, in the other? Would not a statute oppressively encroaching on the personal liberty of the colonists, or wantonly interfering with the exercise of their industry, be in all respects as objectionable as a statute enacting that "their deeds and contracts shall be void, unless written upon paper or parchment which has paid a duty to the state?" Nor do I see how our constitutional rights would be at all endangered by acknowledging the undoubted fact, that representation was unknown in this country till the end of the reign of Henry III., and that the Commons did not till long after sit in a separate chamber as an independent branch of the legislature. The assertion that all property and that all classes were represented in England, rather favours George Hardinge's doctrine, "that the Americans were actually represented by the knights of the shire for Kent, because the land in America was all granted by the Crown, to be held in socage of the manor of East Greenwich in that county." However, our patriot displayed a noble enthusiasm on this occasion, and perhaps one ought to be

* 16 Parl. Hist. 177.

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ashamed of critically weighing the expressions which he used.*

He supports the Rockingham administration.

With the exception of opposing the declaratory Act, Lord Camden gave the Rockingham administration his cordial support, and he was free from the imputation to which Mr. Pitt was subject, of assisting the Court in getting rid of men who were sincerely anxious to conciliate America.

July, 1766. Negotiations on the breaking up of the Rockingham administration.

When Lord Northington at last abruptly brought on a crisis, and Mr. Pitt was sent for to form a new administration, Lord Camden was on the Midland Circuit. A communication was immediately opened between them; and Lord Camden expressed his willingness to co-operate in any way for the public good. The state of his mind, and the progress of the negotiation, will best be disclosed by the following letters written by him to Mr. T. Walpole, a common friend.

"July 13. 1766. Nottingham.

"Dear Sir,

"I thank you for your intelligence, which turns out to be true, as the same post brought me a letter from the Chancellor to the same effect, though more authentic and circumstantial. Mr. P. then is come. May it be prosperous! But I foresee many difficulties before an administration can be completely settled. You are near the scene of action, and as likely to be entrusted by the great man as any body; or, if not, must of course be so conversant with those who know, as to hear the best intelligence. My old friend, the C^r has taken so much laudable pains to leave his office, that he must, in my opinion, remain. The D. of N., and your friend, the Marquess, must give way: but I do not believe Mr. P. will wish to remove the rest in office, unless, perhaps,

* Junius, in his first letter, which appeared on the 21st of January, 1769, six years before hostilities commenced, severely reflected on the speeches of Mr. Pitt and Lord Camden in this debate, and accused them of thereby separating the colonies from the mother country. "Mr. Pitt and Lord Camden were to be the patrons of America, because they were in opposition. Their declaration gave spirit and argument to the colonies; and while, perhaps, they meant no more than the ruin of a minister, they, in effect, divided one half of the empire from the other." I cannot agree with this unscrupulous writer in imputing improper motives to them; but I do agree with him in condemning their assertion, "that the authority of the British Legislature is not supreme over the colonies in the same sense in which it is supreme over Great Britain."— See *Junius's Letter* 5th October, 1771.

they, in a pique, should scorn to hold on under his appointment, which I do not expect. It is an untoward season of the year, every body out of town — and expresses must be sent for concurrence and concert to poor gentlemen who are at their country-houses, without friends or advisers near; so they must, in some measure, follow the dictates of their own judgment, which may be more likely to mislead than direct. I am unable to conjecture; but if I am not much mistaken, the E. T. will accede.

"I can send you nothing in return for your intelligence, unless I could suppose you could be interested with stories of highwaymen and housebreakers. Perhaps you will not be displeased to hear that I am well and in good spirits — have had much travelling and little business — that one-third of my circuit is over, and that I am, let matters be settled or unsettled,

"Most sincerely yours,
"CAMDEN."

"July 19. 1766. Leicester.

"Dear Sir,

"I am arrived late at this place, and find letters from you and Nuthall, pressing me to leave the circuit. I am willing enough to quit this disagreeable employment, but I think I ought not upon a private intimation, to depart from my post. If you will by letter, or by express if you please, only tell me that Mr. Pitt would wish to see me, I will come to town at a moment's warning. L[d] T. is gone. If Mr. Pitt is not distressed by this refusal, or if he is provoked enough not to feel his distress, I am rather pleased than mortified. Let him fling off the Grenvilles, and save the nation without them.

"Your's ever, &c.
"CAMDEN."

"July 20. 1766. Leicester.

"Dear Sir,

"I have slept since I wrote to you, and having taken the advice of my pillow upon the subject of my coming to town,

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I remain of the same opinion, that I ought not at this time to quit my station, uncalled and uninvited. If Mr. P. really wants me, I would relieve his delicacy by coming at his request, conveyed to me either by you or Mr. Nuthall; but I suspect the true reason why he has not desired me to come, is because as things are just now, he does not think it fitting. Sure Mr. P. will not be discouraged a second time by Lord T.'s refusal. He ought not for his own sake, for it does become him now to satisfy the world that his greatness does not hang on so slight a twig as T. This nation is in a blessed condition if Mr. P. is to take his directions from Stowe. A few days will decide this great affair, and a few days will bring me back of course. In the mean time, if my sooner return should be thought of any consequence, I am within the reach of an express. I was catched at Chatsworth by the D. of Devon and his 2 uncles, and very civilly compelled to lye there; but not one word of politics.

"I am, &c.

"CAMDEN."

"Warwick, July 24. 1766.

"Dear Sir,

"I am much concerned to find that Mr. Pitt's illness hangs upon him so long, and the wishes of the public by that means disturbed. He must set his hand to the plough, for the nation cannot be dallied with any longer. L^d^ T.'s wild conduct, though Mr. P. is grievously wounded by it, may, for ought I know, turn out to be a favourable circumstance to reconcile him more to the present ministry, and of which corps he must form, as he always intended, this our administration. Indeed this inclination is one of the principal grounds of difference between the two brothers. L^d^ T. having closely connected himself with that set of men whom he opposed so inveterately, I have heard very authentically from the Stowe quarter, that one of the chief points upon which they broke was upon the promotion of L^d^ G., and recommended by L^d^ T. to be Secretary of State, under the colour of enlarging the bottom, and reconciling all parties. That since he asked nothing for his brother G., he had a right to insist upon this promotion. The other, on the con-

trary, put a flat negative upon all that connexion. L$^{d}$ T. was very willing to go hand in hand with Mr. P. *pari passu*, as he called it, but would acknowledge no superiority or control. This was continually and repeatedly inculcated, not to say injudiciously, if he really intended to unite, because such declarations before hand must create an incurable jealousy, and sow disunion in the very moment of reconciliation. He taxes Mr. P. with private ingratitude, and is offended that two or three days elapsed before he was sent for. This is public talk at his Lordship's table, and therefore requires no secrecy. There are now, or will be in a few days at Stowe, the two Dukes of B. and M., with their ladies, Sir J. Amhurst and the royal guests. Therefore L$^{d}$ T. is declared not the head of that party, for that is an honour he must never expect, but a proselyte received amongst them. Let not Mr. P. be alarmed at this formidable gathering of great men. The King and the whole nation are on the other side. I hope to be in town next Wednesday. In the meantime,

"Believe me, &c. CAMDEN."

Lord Camden agrees to accept the Great Seal.

When he arrived in town, on the conclusion of the circuit, he found the whimsical arrangement nearly completed,—according to which Mr. Pitt, becoming a Peer, was to be Lord Privy Seal and Prime Minister, the Duke of Grafton was to be first Lord of the Treasury, Lord Northington was to be President of the Council, Sir Charles Saunders was to be first Lord of the Admiralty, and Lord Shelburne and General Conway were to be Secretaries of State. The Great Seal was offered to Lord Camden, and, without hesitation, he accepted it,—stipulating only (as he reasonably might), that on giving up a lucrative situation, which he held during good behaviour, he should have a retired allowance of 1500*l.* a year, and the reversion of a tellership for his son.* Although

* In a letter to the Duke of Grafton, dated 1st Aug. 1766, he says—"The favours I am to request from your Grace's despatch are as follows:

"1. My patent for the salary.

"2. Patent for 1500*l.* a year upon the Irish establishment, in case my office should determine before the tellership drops.

"3. Patent for tellership for my son.

"4. The equipage money: Lord Northington tells me it is 2000*l.* This, I believe, is ordered by a warrant from the Treasury to the Exchequer."

there were strange and discordant elements in the new cabinet into which he was to enter, he reasonably supposed that he must be secure under the auspices of that great man who had formed it, and who had himself, through life, been the devoted friend of liberty.

His expectations of the new administration.

Believing that the Lord Privy Seal would reduce into insignificance the Heads of the Treasury and of the Admiralty, and the Secretaries of State, he anticipated, with certainty, the speedy conciliation of America, the increased humiliation of the House of Bourbon, and the return of tranquillity at home, by the abandonment of the unconstitutional policy which had marked the measures of government since the commencement of the present reign. He thought that Pitt's second administration was to be as prosperous as the first,—if, from its pacific tendency, it should be less brilliant. For himself, he calculated that with such a chief the political functions of his office would require little time, and cause little anxiety,—so that concurring in the measures of a powerful as well as liberal government, he might chiefly devote himself to the discharge of his judicial duties, and to the improvement of our jurisprudence.

Great Seal delivered to him.

At a council held at St. James's on the 30th of July, 1766, Lord Camden received the Great Seal from his Majesty, with the title of Lord Chancellor.

# CHAPTER CXLIV.

## CONTINUATION OF THE LIFE OF LORD CAMDEN TILL HE BECAME AN EX-CHANCELLOR.

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July 30. 1766.

LORD CAMDEN's appointment to the woolsack gave almost universal satisfaction*; and he had more doubts than any one else as to his own sufficiency. He deemed it lucky that he had the long vacation to refresh his recollection of Equity, and to get up the cases which had recently been decided in the Court of Chancery, while he had been a common law Judge.

Lord Camden as an Equity Judge.

He held sittings before Michaelmas Term in Lincoln's Inn Hall, and on the 6th of November, the first day of the term, after a grand procession from his house in Lincoln's Inn Fields to Westminster Hall, he was there installed in his office with all the usual solemnities.†

His qualifications.

As an Equity Judge Lord Camden fully sustained the reputation he had acquired while presiding in the Court of Common Pleas. When he pronounced a decree upon the construction of a will, or the liability of a trustee, he was

* Lord Shelburne, in a letter to Mr. Pitt, dated 10th July, 1766, says, in a "P. S. You must permit me to add how happy I am in the choice of a Chancellor — and murmurs only come from the Ultra Tories."

† "30th July, 1766. Robert Earl of Northington, Lord High Chancellor of Great Britain, having delivered the Great Seal to the King, at his Palace of St. James's, on Wednesday, the 30th day of July, 1766, his Majesty, the same day, delivered it to Charles Lord Camden, Chief Justice of the Common Pleas, with the title of Lord High Chancellor of Great Britain; who was then sworn into the said office before his Majesty in Council. His Lordship sat in Lincoln's Inn Hall during the Seals before Michaelmas Term; and on Monday, the 6th day of November, being the first day of Michaelmas Term, went in state from his house in Lincoln's Inn Fields to Westminster Hall, accompanied by the Earl of Northington, Lord President of the Council, the Duke of Grafton, First Lord of the Treasury, the Earl of Bristol, Lord Lieutenant of Ireland, the Earl of Shelburne, and the Right Honourable Henry Seymour Conway, two of his Majesties principal Secretaries of State, the Lord Viscount Barrington, Secretary at War, Lord Edgecombe, Treasurer of the Household, Sir Charles Saunders, Knight of the Bath, First Lord of the Admiralty, the Master of the Rolls, the Judges, King's Serjeants, King's Counsel, and other persons of quality. The Lords accompanied him to the Court of Chancery, where (before he entered upon business), in their presence, he took the oaths of allegiance and supremacy, and the oath of Chancellor of Great Britain, the Master of the Rolls holding the book, and the Deputy Clerk of the Crown reading the said oaths: which, being done, the Attorney General moved that it might be recorded, and it was ordered accordingly. Then the Lords departed, leaving the Lord Chancellor in Court." — *Cr. Off. Min.*, No. 2. p. 14.

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not received with shouts of applause from hundreds of thousands of persons assembled round the Court, as when he ordered the liberation of WILKES, or adjudged the illegality of "general warrants;" but he now conciliated the calm respect and good opinion of all parties by his extensive legal information, by his quickness of perception and soundness of understanding, by the perspicuity with which his opinions were propounded, by the patience and impartiality which he uniformly displayed, and by his dignified politeness which appeared more graceful by contrast with the unrefined manners of his predecessor. Although without the qualification now considered indispensable and all-sufficient for the Equity bench, of having passed many years in the drudgery of drawing bills and answers, his mind was deeply imbued with the general principles of jurisprudence: he had studied systematically the Roman civil law, — he was acquainted with the common law of England in all its branches, the most familiar and the most abstruse, — his time in his earlier years after entering the profession not having been engrossed by "*præpropera proxis*," — instead of a hurried attention to a great variety of points, he had acquired the habit of deliberately investigating great questions, — as a Nisi Prius leader he possessed the faculty of sifting evidence and dealing rapidly and skilfully with facts, — he had taken infinite pains to make himself master of Equity doctrines and practice, — and for some years he had been first in business, as well as in rank, at the Chancery bar. In those days the notion had not sprung up that a common lawyer was unfit to be an Equity Judge, and Lord Camden was allowed to discharge his duty most admirably, even by hoary fixtures of the Court, such as AMBLER, who had "practised as a barrister for upwards of forty years, of which thirty were employed in the Court of Chancery, under five Lord Chancellors, three sets of Commissioners, and five Masters of the Rolls."*

Defective reports of his decisions.

But we must appreciate his merits chiefly by the general testimonies in his favour from his contemporaries; for, when Chancellor he was most unfortunate in the want of a "vates

* Preface to Ambler, vi.

sacer." Not unfrequently his chief reporter, after a brief statement of the arguments of the defendant's counsel, thus deals with a judgment on which the Judge had bestowed great labour, and which was admired for its learning, precision, and lucid arrangement: "And Lord Camden being of the same opinion, which he delivered at large, the bill was dismissed."* But though these chroniclers only give us his dry conclusions of law in the fewest and most ordinary words, we may form a notion of his style and manner from a "Reminiscence" of BUTLER. "I distinctly remember," says he, "Lord Camden's presiding in the Court of Chancery. His Lordship's judicial eloquence was of the colloquial kind—extremely simple,—diffuse, but not desultory. He introduced legal idioms frequently, and always with a pleasing and great effect. Sometimes, however, he rose to the sublime strains of eloquence; but the sublimity was altogether in the sentiment; the diction retained its simplicity; this increased the effect."†

I do not think that during the time he held the Great Seal (only three years and a half) he added much to our Equity code. I do not find questions of greater importance settled by him, than that a bequest to "the most necessitous of my relations" shall go among the *next of kin*, according to the Statute of Distributions, without any inquiry into their circumstances‡; and that by a bequest "of all the testator's pictures," (he having at the making of his will a good collection,) after-purchased pictures shall pass.§

Equitable points decided by him.

Only one of his decrees was reversed, and the general opinion has been, that the reversal was wrong. A testator having devised freehold estates to certain uses, and bequeathed a leasehold messuage to trustees to convey to the uses of the freehold, "so that they should not separate," suffered a recovery of the freehold estates, whereby, as to them, the will was revoked, Lord Camden held, that the bequest of the leasehold was revoked also.‖ This decree was reversed on appeal; but Lord Eldon said, in *Southey* v.

* Ambler, 660. Dickens is generally more provokingly deficient.
† Butler's Reminiscences.
‡ *Wedmore* v. *Woodroffe*, Ambler, 636. § Ib. 640.
‖ *Darley* v. *Darley*, Amb. 653.

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*Somerville**, that "he should be disposed to agree with the opinion of Lord Camden rather than the judgment of the House of Lords;" and, on principle, I conceive it must be assumed (however contrary to the fact), that the testator knew and intended all the consequences of the recovery which he suffered.†

Confusion produced by Lord Chatham's illness.

Lord Camden's plans for legal reform were defeated by the unhappy turn which politics and parties took (so contrary to his seemingly well-founded expectations) almost from the moment of his elevation to his present office. He had intended, under the auspices of Lord Chatham, again to have brought forward his Habeas Corpus Bill, with some other measures to improve the administration both of criminal and civil justice; but the great luminary to whose light and influence he had trusted was eclipsed, and for a time seemed blotted out of the system, so that darkness was spread over the political world, and chaos seemed to have come again.

Character of Lord Chatham's last administration.

Lord Chatham had scarcely called into existence his motley administration — pleasantly depicted by Burke, as "a cabinet so curiously inlaid — such a piece of diversified mosaic — such a tesselated pavement without cement — here a bit of black stone, and there a bit of white, which had a chance of coherence only from the controlling genius of its framer" — when by fresh and aggravated attacks of his old malady, the gout, he was almost disabled from attending to public business, and soon after, on account of a nervous disorder which is supposed even to have affected his mind, he was long seen only by his wife and his medical attendants. The consequence was, that Lord Camden's situation soon became most embarrassing and distressing; after a period of utter confusion, the members of the government from whom he most differed got the ascendency, and from the protracted hope of the restoration of his friend, who nominally continued in office, he was cut off from the resource of resigning and going into opposition.

The first difficulty which arose after the formation of the

* 13 Ves. Jun. 492.

† 3 Br. P. C. 365.; and see *Carrington* v. *Payne*, 5 Ves. Jun. 404.; *Lowndes* v. *Stone*, ib. 649.; *Ware* v. *Polhill*, 11 Ves. Jun. 280.

new government was from the scarcity, and apprehension of famine produced by the failure of the harvest. The price of provisions was rapidly advancing, and the greatest alarm prevailed in the public mind. The prime minister was confined to his bed at Bath. A proposal being made that the exportation of corn should be prevented, the Chancellor recommended that this object should be effected by an order of the King in council. Lord Chatham, who was still able to communicate with his colleagues by letter, concurred in this advice, and the measure was carried into effect. It was popular in itself, but rendered odious by the manner in which it was defended. I have already mentioned the scrape into which the government was on this occasion precipitated by the indiscretion and intemperance of Lord Northington, now President of the Council.* He ought to have been thrown overboard, and the foundering vessel would have righted. Lord Camden thought that he must be supported, and was so far misled by his zeal to serve a colleague, as to persuade himself (in trying to persuade others) that the act of interfering with lawful commerce, although against an express statute, was not only justifiable from expedience, so as to entitle the parties concerned in it to be protected by an indemnity, but was in itself strictly legal, and without any indemnity might be defended in a court of justice.—According to the evidence of credible witnesses present, he at last worked himself up to say:—"The necessity of a measure renders it not only excusable, but legal; and consequently a judge, when the necessity is proved, may, without hesitation, declare that act legal which would be clearly illegal where such necessity did not exist. The Crown is the sole executive power, and is therefore intrusted by the constitution to take upon itself whatever the safety of the state may require during the recess of parliament, *which is at most but a forty days' tyranny*. The power exercised on this occasion was so moderate, that Junius Brutus would not have hesitated to intrust it even to the discretion of a Nero."†

Order in Council prohibiting exportation of corn.

Dec. 1766.

Lord Camden's doctrine of necessity affording a legal justification to the breach of an act of parliament.

His famous expression of "forty days' tyranny."

He now received from Lord Temple the severest chastise-

* Ante, p. 216.
† Lord Charlemont's Correspondence, p. 22.

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He is severely chastised by Lord Temple.

ment ever inflicted upon him. "Forty days' tyranny!" exclaimed his opponent. "My Lords, tyranny is a harsh sound. I detest the very word because I hate the thing. But is this language to come from a noble and learned Lord, whose glory it might and ought to be to have risen by steps which liberty threw in his way, and to have been honoured as his country has honoured him, not for trampling her under foot, but for holding up her head. I have used my best endeavours to answer the argument of the "forty days" by argument founded on principles; I will now give the noble and learned lord one answer more, and it shall be *argumentum ad hominem*. That noble and learned Lord has said, I believe, on other occasions, and he has said well, *the price of one hour's English liberty none but an English jury could estimate*, and juries under his guidance have put a very high value upon it, in the case of the meanest of our fellow subjects when opprest by the servants of the state. But "forty days' tyranny" over the nation by the crown! Who can endure the thought? My Lords, less than "forty days' tyranny" such as this country has felt in some times, would, I believe, bring your Lordships together without a summons, from your sick beds, faster than our great patriots themselves, to get a place or a pension, or both*, and for aught I know make the subject of your consultation that appeal to Heaven which has been spoken of. Once establish a dispensing power, and you cannot be sure of either liberty or law for *forty minutes*."† Lord Mansfield, more calmly but not less forcibly, pointed out the fallacy and the dangerous consequences of the Chancellor's reasoning, and on this occasion gained a signal triumph over his rival. There can be no doubt that Lord Camden was confounding acts which the law says may be lawfully done in a case of necessity — with acts done in violation of the law for the public good, — and that his doctrines led inevitably to a power in the Crown to suspend or repeal all laws, without the previous or subsequent sanction of parliament. The doctrine has never since been contended for;

* Lord Camden was often taunted with his retired allowance, under the name of "pension."

† Adolph. Hist. i. 290.

and whenever ministers, for the safety of the state, have acted contrary to law, they have thrown themselves upon parliament, and asked for a bill of indemnity.*

June, 1769. Mr. Pitt disappears.

The government, rendered unpopular by this exhibition, was soon entirely deprived of all assistance from Lord Chatham, who was unable to attend either the debates in the House of Lords, or the meetings of the Cabinet, and shut up in his house at Hayes, refused to correspond on business with his colleagues, or with the King. In a fit of national fatuity, which we can only explain by supposing that it was inflicted as a special visitation from Heaven for the sins of the people, — within a few months after the repeal of the American Stamp Act, there was passed, without opposition, and almost without public observation, the fatal act imposing a duty on tea and other commodities when imported into the colonies, — which led to the non-consumption combination, — to the riots at Boston — to civil war — to the dismemberment of the empire. How Lord Camden should have suffered it

Passing of the Act to tax tea, &c. imported into America.

* "The opposition acknowledged the rectitude of the measure; but we were not to be justified on the ground on which the cabinet thought fit at first to take up the business, by supporting it as maintainable under the Salus Populi Suprema Lex, and we had the mortification, after two days' debate, to stoop to a Bill of Indemnity, which ought to have been proposed in the beginning. . . . . In the struggle for and against the necessity of passing the Indemnity Bill, it was curious to see Lord Mansfield bestriding the high horse of Liberty, while Lord Chatham and Lord Camden were arguing for the extension of prerogative beyond its true limits; and it was in these debates that the upright Chancellor, in the warmth of speaking, inadvertently made use of the expression, 'that if it was a tyranny, it was only a tyranny of forty days.'" — *Duke of Grafton's Journal.*

"With regard to Lord Camden, the truth is, that he inadvertently overshot himself, as appears plainly by that unguarded mention of *a tyranny of forty days*, which I myself heard. Instead of asserting that the proclamation was legal, he should have said, 'My Lords, I know that the proclamation was *illegal*, but I advised it because it was indispensably necessary to save the kingdom from famine; and I submit myself to the justice and mercy of my country.' Such language as this would have been merely rational and consistent; — not unfit for a lawyer, and very worthy of a great man." — PHILO JUNIUS, 15th Oct. 1771.

We are amazed at Lord Camden's "FORTY DAYS' TYRANNY," but it is remarkable that there is hardly any public man who has not, at some time or other, indiscreetly used some expression which has passed into a by-word against him. I might mention Lord Melbourne's "heavy blow and great discouragement to the Church," Lord John Russell's "finality of the Reform Bill," and Lord Lyndhurst's "aliens in blood, language, and religion." I myself had the honour of having 50,000 copies of a speech, which I made in the House of Commons when Attorney General, printed and industriously distributed in every borough in England with freemen possessing the right of voting for members of parliament, because I very indiscreetly said (what was very true) that the "right of freemen to vote was *the plague-spot* on our representative system."

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to pass through the House of Lords in silence, I profess myself wholly at a loss to conjecture; it was not only impolitic, but, according to his doctrine, it was *ultra vires parliamenti*, and to be treated as a nullity; for to justify this by calling it "a commercial regulation," would only be rendering more contemptible his flimsy and fallacious distinction between a power to regulate commerce, and a power to impose a tax.*

Sept. 1767. Charles Townsbend's new administration. His sudden death.

After Parliament was prorogued, Lord Camden had very nearly been deprived of the Great Seal, when he had held it little more than a year,—and for his fame as a minister there is great reason to regret his continuance in office. Lord Chatham's health was deemed irrecoverably gone, and Charles Townshend, with the concurrence of the King, had arranged a new administration, in which he himself was to have been First Lord of the Treasury, and Charles Yorke was to have been his Lord Chancellor,—when the plan was rendered abortive by his sudden and lamented death, in the flower of his age.

Duke of Grafton's administration.

Then followed the arrangement called the "Duke of Grafton's administration," in which he was recognised as prime minister. Lord Chatham still retained the Privy Seal, and was supposed to be a member of the cabinet, but he remained entirely sequestered from public business under circumstances which will never be fully explained.

Lord Camden did not concur in all the opinions of the First Lord of the Treasury, but greatly preferred him to the Duke of Bedford, Lord Shelburne, or any other Whig leader, and the closest friendship was established between them. To this we are indebted for the letters I am about to introduce, which will be found to throw a new light upon the state of parties, and the history of the country from this time, till the reins of government were placed in the hands of Lord North.

* Ten years afterwards, when the sowing of the wind was producing the whirlwind, Lord Camden being taunted with his sanctioning of the tax, he said, "I confess, as mere matter of supposition, the conjecture is plausibly supported, but the fact was entirely otherwise. I never did, nor ever will, give my consent to raising any tax in any form on the people of America for the purpose of raising a revenue to be under the disposal of the British parliament."—18 Parl. Hist. 1222. His confidential correspondence with the Duke of Grafton had not then commenced.

An important question soon arose, whether the Great Seal of Ireland should be held by an Irish or an English lawyer? Lord Townshend was then Lord Lieutenant, and for the sake of popularity, being naturally desirous of having an Irishman, had brought over the Duke of Grafton to the same opinion. However, Lord Camden being consulted by him, wrote back the following answer:—

"Bath, Sept. 27. 1767.

"My dear Lord Duke,

Q. Expediency of making an English lawyer Chancellor of Ireland?

"I have since the receipt of your Grace's letter turned my thoughts upon the subject of it with the most serious attention, and am displeased with myself for not agreeing altogether with your Grace in conferring the Irish Seal upon an Irishman. I will readily confess that I am not a competent judge of this question, for want of knowing the true state of that country, the manner in which it has been governed of late years, the power and influence of the several connexions, and, above all, the importance of the Irish bar in the House of Commons there; and therefore it is very likely that your Grace may be much better enabled than myself to form a true judgment upon the utility and policy of complimenting the Irish with the high office. Your Grace, however, has a right to my poor opinion, such as it is; and indeed, my Lord, I am very loth to give up to the unreasonable demands of two of those barristers (however eminent) the last, as well as most important law office in that kingdom, which England hitherto has thought fit to reserve to herself. All the chiefs upon each bench were formerly named from hence; the Irish have acquired the King's Bench, and the late Lord Lieutenant, for the first time, made them a present of the Chief Baron; and there has not for many years been an instance of a puisne judge sent from this country; I believe Baron Mounteney was the last.

"Thus, by degrees, has this country surrendered up all the great offices of the law, except only the Common Pleas and the Great Seal; and I much doubt whether this country acquires any advantage by all these concessions.

"In the last session, Mr. Flood moved a general censure

upon the characters and capacity of the Judges sent from England, with a view, no doubt, of inflaming the people against all these nominations, in hopes of extending their encroachments to a total exclusion of the English from the Irish bench; and now, such is the danger of precedent, they threaten general opposition (for so I understood from Lord Clare) if this favour is refused, and your Grace seems to think it will be an affront upon the next Council there.

"Jocelyn and Bowes, though both Englishmen, are honoured with the appellation of Irish for the present purpose, and are cited as precedents in their favour. I am very apprehensive, that if your Grace should indulge now the Irish in this *demand* (for I can call it by no other name), the precedent will bind England for ever; for national favours once conferred can never be resumed. Ireland has reason enough to be discontented with the mother country: the popular party are sure to distress the Castle to some degree every session, and the method has been hitherto to win over the leaders in the House of Commons by places, pensions, and honours, which has enabled the Lord Lieutenant for the time being to close his particular session with ease to himself; at the same time that it has ruined the King's affairs, and enraged the people. The next successor is involved in the same difficulties, and his convenience has been complimented by the like measures; till, at last, by this profusion of rewards, the Government has nothing to give, and is left beggared, and consequently unsupported. In such a state of things, would your Grace wish to pursue such a plan, and grant now, before the opening of the session, the highest post in the law to one member only of the House of Commons (for only one can have it), whose removal afterwards to make room for an Englishman (let his behaviour be ever so obnoxious) would be a most odious and unpopular measure in that country? An Englishman in the office is expected to remain an Englishman, and is permitted; an Irishman anglicised would never be endured. Indeed, my Lord, the very yielding, in my humble opinion, would be a weakening of government, and be more pernicious than the most troublesome session.

"I am truly sensible of Lord Townshend's embarrassments, and foresee that, if he should not obtain this boon, he must expect to meet with some very disagreeable struggles. But, I dare say, his zeal, courage, and ability are equal to the whole, and I am sure he will cheerfully undertake what he has accepted, though your Grace should adhere to our first opinion, of keeping the Seal, for the present, in commission.

"Your Grace will be pleased to consider that the Chancellor, Chief Baron, and Chief Justices, are called to the Council in Ireland in the quality of statesmen, and that the Council in that country is an assembly of equal importance of either of the branches of the legislature. If the Lord Lieutenant is surrounded with Irish only filling these offices at the board, he is subject to be overruled in every quarter by the great chiefs of the law, in which case I doubt he must submit.

"But if your Grace should at last be determined to name an Irishman, you will please to consider whether Sir A. Malone is not clearly the properest person. He has not indeed applied for it, but I understand he would be happy with the offer; and such is the deference to his superior character, that every one of those gentlemen who has applied have put themselves only in the second place after him. So that, if your Grace is resolved upon an Irishman, 'Detur dignissimo!' Let it carry with it a march of public spirit, at the same time that it is a management of parties. I know your Grace will forgive my frankness: this is my present opinion, though I will most willingly submit to a contrary determination, and when your Grace has done it, I shall say in public that it is well done; indeed, I shall go near to think so, because I am sure the decision will be taken by those who understand Ireland better than I do.

"I presume your Grace has asked Lord N———'s * opinion upon this subject; that will have great weight with me, as well as your Grace. He used to think as I do, as did Lord Chatham; but different circumstances may well bring about a change of opinion.

* Lord Northington's.

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"I know your Grace will be anxious to hear some news of Lord Chatham; if I had been able to have given you any authentic intelligence of his amendment to any considerable degree, I should have wrote before. The whole country in his neighbourhood report him much better; but his knocker is tied up, and he is inaccessible. I read a letter from Lady Chatham yesterday, who is so fearful of owning my Lord to be better, that she retracts it, even while she is admitting it in the same sentence, and conveys hopes of his recovery while she forbids them. I verily believe he is considerably mended.

"I propose to be in town on Monday morning, the 7th of next month, to prorogue the Parliament, at eleven o'clock in the morning, if your Grace will be so good as to order the proper preparations, — to go to Court, — to swear in Lord North, and set out immediately for my return. I hope this will be permitted.

"I have the honour to be, with the most perfect respect and esteem, your Grace's

"Most obedient faithful Servant,

"CAMDEN."

Lord Townshend still pressed very hard for the appointment of an Irish lawyer, and in a letter to Lord Camden, said, — "This measure is the very criterion of an odious or a popular administration; if the concession is not granted, it will be a proof of my own insignificance, and the safest course will be for me to confess it to all mankind." Lord Camden, therefore, wrote to the Duke of Grafton: — "When such language is used, there are but two things to be done — to quarrel or to submit. The first being, at this time, to the last degree improvident and dangerous, which his Lordship well knows makes the latter necessary." However, the Cabinet resolved on resistance, as appears by the following letter from Lord Camden to the Duke of Grafton: —

Sept. 29. 1767.

Lord Camden on the appointment of an Irish Chancellor.

"I find by your Grace's letter, and one I received from Lord Shelburne, that I am called upon to name a person for the Irish Seal. He must be eminent, and one who at this ticklish juncture would be every way fit for the office. I

doubt it will be too much for me, in such a dearth of men willing to accept, to recommend one who will answer that description, nor dare I undertake it without the sanction of a cabinet. The whole business is, indeed, a state question, and does not properly fall within my department." Mr. Serjeant Hewitt, afterwards Lord Lifford, was fixed upon.

The Duke of Grafton says in his Journal,—"Lord Northington's opinion concurred so fully with Lord Camden's on the disposal of the Great Seal of Ireland, that the Cabinet was persuaded not to give way to Lord Townshend's reasoning in favour of an Irish lawyer's holding it, and I am persuaded that our firmness gave more real consideration to his Lordship's situation, and dignity and weight to his government, than any yielding of his own would have effected. Before Parliament met, Mr. Serjeant Hewitt accepted the Seal, with every good disposition to discharge properly the great trust put into his hands, and his learning as a lawyer sanctioned our expectations from the appointment. He was a true Whig, and bore a character to which all parties gave their assent of respect; and though his speeches in parliament were long, and without eloquence, they were replete with excellent matter, and knowledge of the law. His conduct in Ireland, under the peerage of Lifford, soon gained the esteem of the public."

Appointment of Hewitt, afterwards Lord Lifford, as Irish Chancellor.

Lord Camden's views on this subject were tinged by the prejudices which then subsisted in England, respecting the subjection of Ireland. The two countries must now be considered on a footing of perfect equality, and the only consideration is, what is most conducive to their mutual interest? That great statesman, Lord Wellesley, proposed (I think wisely) as a solution of this question,—that there should be one bar for England and Ireland, and that while lawyers practising in England should be occasionally appointed to preside in the Courts of Justice in Ireland, lawyers practising in Ireland should be reciprocally appointed to preside in the Courts of Justice in England.

Proposal to appoint English lawyers to be Irish Judges, and Irish lawyers to be English Judges reciprocally.

Public affairs remained in a state of considerable tranquillity till the sudden re-appearance in England of the

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Wilkes elected for Middlesex.

notorious John Wilkes, which threw the whole nation into a ferment. After the popularity he had acquired by establishing the illegality of "general warrants" and of "the seizure of papers by authority of the Secretary of State," he had been convicted of publishing seditious and obscene libels; he had been outlawed; and he had lived in exile. Having failed in negotiations to obtain a pardon, he now boldly presented himself at the hustings as a candidate to represent the city of London in parliament. Being defeated there, he started for Middlesex, and he was returned for this county by a great majority, being supported by a mob, who compelled all who appeared in the streets and highways to join in the cry of "Wilkes and Liberty!" The Government was most seriously alarmed, and Lord Camden, with the other ministers, being summoned to attend a meeting of the Cabinet, wrote the following letter to the Duke of Grafton:

March 28. 1768.

Alarm of the Government.

"Bath, April 3. 1768.

"My dear Lord Duke,

Lord Camden to the Duke of Grafton, as to the course to be pursued.

"Whatever vexation and inconvenience I may feel at this unexpected summons, which calls me from hence above a week before the time, yet I shall, without fail, give my attendance at the time appointed. The event is disagreeable and unforeseen, for I am persuaded that no person living, after Wilkes had been defeated in London, would have thought it possible for him to have carried his election for the county of Middlesex. Sure I am, that if the Government had arrested him while he was a candidate, this step would have secured his election, and would have been considered as the cause of his success. I cannot pretend, at this distance, without further information, to advise what proceedings are now necessary, as the only subject for consideration seems to be, what measures are to be taken by the House of Commons at the meeting of Parliament. If the precedents and the constitution will warrant an expulsion, that perhaps may be right. A criminal flying his country to escape justice—a convict and an outlaw! That such a person should, in open day-light, thrust himself upon the country as a candidate, his crime unexpiated,—is audacious

beyond description. This is the light in which I consider the affair; the riot only inflaming the business, and not showing the weakness of the Government more than any other election riot in the kingdom. But it would be well to consider what may be the consequences if W. should be re-elected. That is very serious. I take it for granted that he will surrender, and receive judgment in the K. Bench, the first day of the Term,—when, I suppose, the outlawry will be reversed, and he will be imprisoned. We expect him at this place to-night, where, I suppose, he intends to remain till the Term; and this town is not a little alarmed lest the same spirit of violence should follow him hither. But, I trust, we are not mad enough here to follow the example of the metropolis. Whatever may be the heat of the present moment, I am persuaded it will soon subside, and this gentleman will lose his popularity in a very short time after men have recovered their senses.

"I am, &c."

Wilkes to be expelled the House of Commons.

At the Cabinet all present appear to have acquiesced in the determination that Wilkes should immediately be expelled the House of Commons; but when it appeared that the demagogue, instead of submitting to his sentence, meant to insist that the outlawry was erroneous, — that all the proceedings against him were void,—and that he was entitled to be treated as an innocent man,—the Chancellor quailed, and thus addressed the Premier:

"20th April, 1768.

"My dear Lord,

Lord Camden to the Duke of Grafton, objecting to this proceeding.

"I dare say you have been informed of what passed to-day in the Court of King's Bench, and that Mr. W. is still at large. His counsel, however, promised that he should be forthcoming in custody, and then move to be bailed; sue out a writ of error and reverse the outlawry. They gave notice, likewise, that they intended, after they had got rid of the outlawry, to move in arrest of judgment. Your Grace will be pleased to perceive that Mr. W. stands at present convicted only by verdict; and if there shall appear to be any material

defect iu the record, that the judgment must be stayed; in which case he must be discharged, and he becomes a freeman upon this prosecution as much as if he had never been convicted. I dare say your Grace will see, upon this short representation, that till judgment is finally pronounced against Mr. W. by the Court, no man has a right to pronounce him guilty. This appears to me a real difficulty attending the measure, which yesterday we thought so clear. For how can the House expel a member, either as an outlaw or a convict, while the suit is pending, whereas he may turn out at last to be neither the one nor the other. I am afraid, considering the necessary delay in courts of law, it will be impossible for the King's Bench to give judgment before the Parliament meets, and therefore it deserves the most serious consideration whether the proposed measure should be pursued while the obstacle stands in the way.

"I have the honour," &c.

Wilkes expelled, Lord Camden approving.

The motion for the expulsion was accordingly deferred till, the outlawry being reversed, sentence of imprisonment for a year and ten months was pronounced on Wilkes, and he insulted Parliament by a virulent libel, which, at the bar of the lower House, he avowed and boasted of. His expulsion was then carried, and a new writ was ordered to elect another representative for Middlesex. This proceeding, though impolitic, cannot be considered unlawful or unconstitutional; for there might be a presumption that his constituents would not have elected a person guilty of such misconduct, and it might be fair to give them an opportunity of determining whether they would still have him for their representative.

Lord Camden condemns all the subsequent proceedings respecting Wilkes and the Middlesex election.

I am glad to think that the subsequent proceedings respecting the Middlesex election were not sanctioned by Lord Camden; for I believe that all mankind are now agreed that the House of Commons acted illegally and unconstitutionally in again expelling Mr. Wilkes for a supposed offence committed before his re-election, — in declaring him disqualified to serve in parliament, — and in seating Mr. Lutterell as representative for Middlesex, although he had only a small minority of the electors in his favour. The Chancellor is by

no means exempted from blame for consenting to belong to an administration which overruled his opinion upon such questions. Although we may account for his continuing in office while he could be considered as having Lord Chatham for a colleague, it does astonish us exceedingly that he still condescended to hold the Great Seal after his great chief had resigned, and was at open enmity with the government. But he was placed in a most painful situation; Lord Chatham was still unable to appear in parliament, and there was no statesman with whom he thought he could better co-operate for the public good than the present head of the Treasury.

The three following letters to the Duke of Grafton explain the removal of Lord Shelburne from the government, the consequent resignation of Mr. Pitt, and Lord Camden's perplexity:

Lord Camden to the Duke of Grafton, on the removal of Lord Shelburne.

"29th Sept. 1768.

"I understand your Grace's plan is fixt, and I saw plainly the last time I was in town that Lord S——'s removal was determined. What can I say to it, my dear Lord? It is unlucky.

"The administration, since Lord Chatham's illness, is almost entirely altered, without being changed, and I find myself surrounded with persons to whom I am scarce known, and with whom I have no connection. Lord Chatham is at Hayes, brooding over his own suspicions and discontents. His return to business almost desperate, inaccessible to every body, but under a persuasion (as I have some reason to conjecture) that he is given up and abandoned. This measure, for aught I know, may fix his opinion, and bring him to a resolution of resigning. If that should happen, I should be under the greatest difficulty.

"I am truly, my dear Lord, distressed. I have seen so much of courts that I am heartily tired of my employment, and should be happy to retire upon a scanty income if an honourable opportunity offered to justify my retreat to the King and your Grace — but that step I will never take without your consent, till I find I have not the King's favour and your confidence, unless I should be forced by something more compelling than the Earl of S——'s removal.

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"After all, though your Grace is so good as to relieve me from any opinion on the subject, yet the case being stated as it is, that either your Grace or the Earl must quit, my opinion is clear, in a moment, that your Grace must remain.

"I am," &c.

"14th Oct. 1768.

Same to same on the resignation of Lord Chatham.

"My concern upon the intelligence contained in your Grace's letter is inexpressible, and though I was apprehensive that Lord Shelburne's dismission would make a deep impression upon Lord Chatham's mind, yet I did not expect this sudden resignation. I will still live in hope that his Majesty's letter may produce an alteration, because there is a possibility, though at the same time I do not flatter myself with any sanguine expectations. Your Grace and I feel for each other. To me I fear the blow is fatal, yet I shall come to no determination. If I can find out what is fit for me to do in this most distressed situation, that I must do; but the difficulty lies in forming a true judgment. Whatever my decision may be, I will never resign my active endeavours to support the King's service, or my unchangeable attachment to your Grace. This most unfortunate event will throw the King's affairs into a state of utter distraction. Perhaps order may spring up out of this confusion. I do assure your Grace that my mind is at present in too great an agitation to be soon settled, and therefore I do not give myself leave to form any opinion concerning my own conduct: I shall wait with impatience to hear the conclusion, and am, with the truest zeal and attachment," &c.

"Bath, 16th Oct. 1768.

Same to same as to doubting whether he himself would resign.

"Your Grace's intelligence does not surprise me: I expected it, and predetermined my own journey to London before I had the honour of your Grace's letter. Unfortunately one of my children is so ill that I must wait a day or two before I set out, in order to see what turn her distemper will take. I propose, however, to be in town on Wednesday next, or Thursday at the latest.

"Nothing could give me so much satisfaction as to join with your Grace in one line of conduct, and yet I see plainly

that our situations are different, and the same honour due to the King and regard to the public operating upon two minds equally aiming at the same end, may possibly draw us different ways; but I dare say your Grace will believe me, in all events and circumstances, what I really am,

"With all respect and unfeigned attachment," &c.

Lord Camden remains in office under the Duke of Grafton.

On his return to London, he heard such an account of Lord Chatham as to convince him that the country was for ever deprived of the services of this illustrious patriot, and agreeing to support the present government, he prevailed on Mr. Dunning to follow his example.*

Dispute with America.

The dispute with the colonies was now assuming a most alarming aspect, the act so heedlessly passed to impose a duty on goods imported into America having produced the discontent and the resistance which might have been expected from it. Lord Camden's views upon the subject were most liberal and enlightened, and if he had been listened to, he would have saved the empire from civil war and dismemberment. In the prospect of the meeting of parliament, having been consulted by the Prime Minister respecting the King's Speech, he thus replied:—

Bath, Oct. 4. 1768. Lord Camden to the Duke of Grafton, recommending conciliation.

"As to North America, before a speech can be sketched upon the subject, it is necessary to know what measures the King's ministers intend to pursue, for the speech and the address must mark the outlines of these measures.

"I was a long time in hopes that Massachusets Bay would have been the only disobedient colony. It would have been no difficult matter to have dealt with them if the others had sat still and remained passive; but I am deceived in that expectation, for it is now manifest that the whole continent will unite and make it common cause. We are drifted by I know not what fatality upon Mr. Grenville's ground. We are pressed on the one hand by the declaratory law, and on the other by the colonies' resolute denial of parliamentary authority. The issue is now joined upon the *right* which, in my apprehension, is the most untoward that could have been

* Note to the Duke of Grafton, dated 4th Nov. "I sat late in Court, and have just dined. Mr. Dunning stays in his office at my request."

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started — fatal to Great Britain if she miscarries — unprofitable if she succeeds. For if it is (as I believe your Grace thinks with me it is) inexpedient to tax the colonies, as we all maintained when the Stamp Act was repealed,—after both sides are half ruined in the contest, we shall at last establish a right which ought never to be exerted.

"If the Americans are able to practise so much self-denial as to subsist only for one twelve-month without British commodities, I do very much fear that they will carry their point without striking a blow. Patience and perseverance in this one measure will ruin us; and I am the more apt to dread this event, because it seems to me that the colonies are more sober, and consequently more determined, in the present opposition than they were upon the Stamp Act. For except only the riots at Boston, I see nothing like active rebellion in the other provinces. If this should happen, the merchants and manufacturers here at home will be clamorous, and half our own people will be added to the American party.

"Your Grace will ask, upon this representation of things, *what is to be done?* Indeed, my dear Lord, I do not know what is best to advise. The parliament, I presume, cannot repeal the act in question, because that would admit the American principle to be right and their own doctrine erroneous. Therefore I conclude the parliament will not repeal, consequently must execute the law, and this of course must be the language of the Speech.

"The method how to execute it is the next consideration, and here I am as much at a loss. There is no pretence for violence any where but at Boston. That is the ring-leading province, and if any country is to be chastised, the punishment ought to be levelled there. I have been sometimes thinking, that if the act was repealed in favour of the other provinces, excepting Massachuset's Bay, and there executed with proper rigour, such a measure might be successful. But I am aware that no man, perhaps, but myself, could be brought to relish such a concession, as almost every body else holds the declaratory law to be a sound fundamental one, never to be departed from.

"I submit to the declaratory law, and have thought it

my duty, upon that ground, as a minister, to exert my constitutional power to carry the duty act into execution. But as a member of the legislature I cannot bring myself to advise violent measures to support a plan so inexpedient and impolitic, and I am very much afraid (I speak this confidentially to your Grace) that if a motion should be made to repeal the bill I should be under the necessity to vote for it. But there are so few in my way of thinking, that such a motion is not to be expected.

"I am very sensible that a difference of opinion upon a subject so serious and important may be prejudicial to the administration, and I lament the occasion, being persuaded that a most perfect union amongst us is essential, and I will labour to effect it with my best endeavours. But I do fear, most exceedingly, that upon the American question the Bedfords and myself will be too far asunder to meet. I must maintain my own ground. The public knows my opinion and knows theirs. Neither of us can be inconsistent with ourselves.

"This letter is to your Grace only. You are my Pole Star, Lord Chatham being eclipsed. I had rather see your Grace at the head of government than any other man in the kingdom, and therefore I have disclosed to you my whole heart upon this ill-fated business. I am sensible that my sentiments do not altogether coincide with your Grace's opinion.

"There is nothing I dread so much as a war with America. I shall be very happy to know the result of your councils in town upon this subject. — Corsica is rather a delicate than a difficult business."*

Lord Camden's advice was entirely disregarded. He had, in like manner, quarrelled with his colleagues respecting the Middlesex election. Still he made an effort to save Dunning, who continuing in office at his request, had given great

* We owe the foregoing letters to the circumstance of the Chancellor having passed the autumn at Bath, while the Prime Minister was at Euston: "Lord Camden and myself unfortunately saw less of each other than in other summers — both of us profiting by a retreat into the country of the leisure which a recess from Chancery and Treasury business offered." — *Duke of Grafton's Journal*, 1768.

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offence to Lord North, now leader of the House of Commons, by insisting on one occasion that Wilkes should be heard before he was condemned. Thus he appealed to the Premier:

Dec. 10. 1768. Lord Camden to the Duke of Grafton in defence of Dunning.

"10th Dec. 1768.

"I had an opportunity, after I saw your Grace yesterday, of hearing an account of what passed in the House of Commons, and I find the debate turned upon this: 'Whether they should vote the paper a libel before Wilkes was heard in his defence?' and, that this was no question on the merits, but only discourse upon the mode of proceeding: that the Solicitor General thought, if Mr. Wilkes was to be heard, he ought regularly to be at liberty to speak to the nature and quality of the paper, as well as to the fact of writing and publishing. And indeed, my dear Lord, I am of the same opinion; and I do verily believe that no lawyer can hold a different language. The Solicitor said that, difficult as the task would be for Mr. W. to maintain an argument that the paper was no libel, yet he ought not to be precluded from that argument,—which he would be if the House determined it to be a libel. I do not see how they can, consistent with the terms of justice, pronounce the paper to be a libel till they have heard him. Now, my dear Lord, give me leave to say that Lord North should not be quite so much offended with Mr. Dunning, because the matter before the House was rather a discourse upon the method of proceeding than a measure of administration. I do not believe Mr. D. will be so base as to remain in office, and not to be hearty in the support of administration. I have the honour," &c.

This application was successful, and Dunning continued in office till after Lord Camden's own removal.

Cabinet summoned on Wilkes's case.

The Ministers found they were getting into such tremendous difficulties respecting the Middlesex election by contemning the Chancellor's advice, that the Prime Minister wrote to him, specially inviting him to attend a Cabinet to be held upon the subject. The following was his answer:

"9th January, 1769.

Lord Camden to the

"My dear Lord,

"I have the honour of your Grace's letter, and will cer-

tainly attend the meeting of the King's servants on Wednesday morning next. I do wish, most heartily, that the present time could be eased of the difficulties that Mr. W.'s business has brought upon the Government: a fatality has attended it from the beginning, and it grows more serious every day. Your Grace and I have unfortunately differed. I wish it had been otherwise. It is a hydra, multiplying by resistance, and gathering strength by every attempt to subdue it. As the times are, I had rather pardon W. than punish him. This is a political opinion, independent of the merits of the cause.

Duke of Grafton, dissuading violent measures.

"I am very glad to hear the holidays have given your Grace so happy a respite. They have been to me a perfect paradise, as I have employed my whole time in studying the Douglas cause, and my mind has been totally vacant from political vexations.

"I have the honour," &c.

Lord Camden, being overruled, ceases to attend Cabinet meetings respecting Wilkes or America, 1768–69.

He attended the meeting, but with no good effect. The Duke of Grafton treated him with great civility, and was inclined to be governed by his opinion; but what he laid down respecting the law and the constitution was scornfully received by all the others.—From thenceforth he constantly absented himself from the Cabinet when the two great subjects of internal and colonial policy were to be discussed —Wilkes and American coercion.

The public were not then in possession of these secrets. For two years it was remarked that he preserved an impenetrable silence in Parliament, unless when, as Speaker, he put the question, and declared the majority; but no one suspected that he had, in reality, ceased to be a member of the Government.*

Jan. 9. 1770. Lord Chatham's restoration to public life.

At last, when Parliament reassembled in the beginning of January, 1770, the Lord Chancellor spoke out. Lord Chatham, after his resignation,—to the astonishment of all mankind, not only experienced a great relaxation of his bodily infirmities, but recovered the full energy of his gigantic intellect. On

* The reports of the debates respecting the Middlesex election and America at this time generally conclude with the words, "The Lord Chancellor was silent."—16 Parl. Hist. 477.

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the first day of the session he was in his place, though supported on crutches and swathed in flannel, and having delivered a most violent speech against the measures of the Government, affirming that the liberty of the subject had been invaded, not only in the colonies, but at home, he moved as an amendment to the address, that "the House would with all convenient speed take into consideration the causes of the present discontents, and particularly the proceedings of the House of Commons touching the incapacity of John Wilkes, Esq., depriving the electors of Middlesex of their free choice of a representative." *

Lord Camden's explanation of his conduct.

Lord Mansfield having taken up the defence of the Government, and insinuated that all their measures must be considered as having the full approbation of the noble and learned Lord who held the Great Seal — "ever considered the champion of popular rights," — the Lord Chancellor left the woolsack, and in a burst of indignation tried to defend his conduct and his consistency. "I accepted the Great Seal," said he, "without conditions: I meant not therefore to be trammelled by his Majesty (I beg pardon) by his Ministers; but I have suffered myself to be so too long. For some time I have beheld, with silent indignation, the arbitrary measures of the Minister; I have often drooped and hung down my head in Council, and disapproved by my looks those steps which I knew my avowed opposition could not prevent. I will do so no longer; but openly and boldly speak my sentiments. I now proclaim to the world, that I entirely coincide in the opinion expressed by my noble friend, whose presence again reanimates us, respecting this unconstitutional and illegal vote of the House of Commons. If, in giving my opinion as a Judge, I were to pay any respect to that vote, I should look upon myself as a traitor to my trust, and an enemy to my country. By their violent

* It was in this debate that he so strikingly contrasted modern peers with their ancestors, who had won Magna Charta: "Those iron barons (for so I will call them when compared with the silken barons of modern days) were the guardians of the people; yet their virtues were never engaged in a question of such importance as the present. A breach has been made in the constitution — the battlements are dismantled — the citadel is open to the first invader — the walls totter — the constitution is not tenable. What remains, then, but for us to stand foremost in the breach, to repair or perish in it?"

and tyrannical conduct, Ministers have alienated the minds of the people from his Majesty's government — I had almost said, from his Majesty's person. In consequence, a spirit of discontent has spread itself into every corner of the kingdom, and is every day increasing; insomuch, that if some methods are not devised to appease the clamours so universally prevalent, I know not, my Lords, whether the people in despair may not become their own avengers, and take the redress of grievances into their own hands." *

Resolution to dismiss Lord Camden.

The amendment being negatived, Lord Rockingham moved that the Lords be summoned for the following day, when he should make a proposal of great national importance: but it being evident that after this scene the government could not go on, Lord Weymouth, the Secretary of State, moved an adjournment for a week. Lord Temple said, "the House well knows for what purpose the Lords opposite want an adjournment; it is to settle the disordered state of the administration, which is now shattered in a most miserable manner, and, in all likelihood, will soon fall to pieces; their particular object is to dismiss the virtuous and independent Lord who sits on the woolsack, and to supply his place with some obsequious lawyer who will do as he is commanded."

Denunciation against every lawyer who would agree to succeed him.

Lord Shelburne added: "After the dismission of the present worthy Chancellor, the Seals will go a begging: but I hope there will not be found in the kingdom a wretch so base and mean-spirited as to accept of them on the conditions on which they must be offered."

Ministerial crisis.

The ministerial crisis which followed was one of the most exciting and memorable in our party annals. Lord Chatham, Lord Temple, and Lord Rockingham were now reconciled, and taking the same view of the questions which then divided the nation, might have formed a strong government, with Lord Camden for their Chancellor,—on the basis of American conciliation, and of the reversal of the unconstitutional judgment at home, that a commoner was rendered disqualified to represent the people by a vote of the House of Commons. But

* 1 Adolphus, 390.; 16 Parl. Hist. 644.; Gent. Mag. Jan. 1770.

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the court was determined to make a vigorous effort to concoct an administration that would push on its favourite policy at home and abroad. A great difficulty was to obtain a lawyer of any reputation to take the Great Seal, as successor to Lord Camden,—particularly after the late denunciations in the House of Lords against all who should think of degrading themselves by basely doing so. Lord Camden, under the advice of his friends, determined that he would not voluntarily resign.

Charles Yorke agrees to accept the Great Seal.

Through persuasions, and with a result which I shall have to detail in the life of Charles Yorke, he was prevailed upon, in an evil hour, to agree to accept the offer pressed upon him, although he condemned his own act at the instant, and soon fatally repented of it.

Lord Camden surrenders the Great Seal.

On Wednesday, the 17th of January, 1770, about seven in the evening, Lord Camden, in pursuance of a summons he had received for that purpose, attended at the Queen's Palace, and there surrendered the Great Seal into the King's own hands. He slept sounder that night than he had done for many months.

The very extraordinary circumstances in which he had been placed must apologise for his political conduct while in office. I am afraid it cannot be strictly justified.

Lord Camden as a Judge of appeal in the House of Lords.

To the last hour of his holding the Great Seal, the exercise of his judicial functions met with universal approbation. I ought not to pass over, without notice, the admirable manner in which he disposed of appeals and writs of error in the House of Lords. Lord Mansfield, on those occasions, generally sat along with him. To the honour of my profession, and for the credit of the decisions of the tribunal judging in the last resort in this country, it should be known that, however strongly law Lords may differ on questions of party politics, they have always zealously co-operated in the endeavour satisfactorily to dispose of the juridical business of the House; and, with a few exceptions,—when the lay Peers have exercised their strict right, and tried to prevail by numbers,—justice has been administered there with entire purity, and on the most enlightened principles. Lord Camden and Lord Mansfield sometimes attacking each other in debate so sharply, as almost to render a resolution necessary, that "they

should be required to give an assurance that *the matter should not go farther*, or that they be taken into the custody of the Black Rod;" they never had the slighest difference of opinion in any case argued by counsel before them.

Feb. 4. 1767. Rights of Dissenters.

Soon after Lord Camden had taken his seat on the woolsack, came on the famous writ of error in *Harrison* v. *Evans*, in which the question was, "whether a Dissenter was liable to a fine for not serving a corporate office which he was disqualified from serving by the Corporation Act, he not having taken the sacrament of the Lord's supper according to the rites of the Church of England?" This arose out of an ingenious scheme to raise a tax upon the Dissenters in the City of London for the purpose of building the MANSION HOUSE, which by law they could never enter. In the city courts judgment was given that the defendant was liable to the penalty of 600*l.* Lord Mansfield moved the reversal of the judgment in one of the finest specimens of forensic eloquence to be found in our books. Having shown that as the person whom the citizens pretended to choose for sheriff could not serve the office (as they well knew), this was merely an attempt to punish him for being a Dissenter, he said,—"Conscience, my Lords, is not controllable by human laws nor amenable to human tribunals. Persecution or attempts to force conscience will never produce conviction, and can only be calculated to make hypocrites or martyrs." Lord Camden rejoicing to hear such noble sentiments from the Lord Chief Justice of the King's Bench, heartily concurred in them, and by the unanimous judgment of the House a great triumph was given to religious liberty.*

Rex *v.* Wilkes.

So when Wilkes's case came to the bar of the House of Lords, Lord Camden and Lord Mansfield agreed on the two points which were raised on the record:—1. "That the Solicitor General when the office of Attorney General is vacant, has authority by law to file a criminal information†;

* 16 Parl. Hist. 313.; 3 Brown's Parl. Cas. 465.; Life of Sir Eardley Wilmot, 73.

† After the resignation of Charles Yorke as Attorney General, before a successor had been appointed, Sir Fletcher Norton, as Solicitor General, had filed the information against Wilkes for composing and publishing the *North Briton*, No. XLV.

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and, 2. "That a defendant being convicted of two misdemeanours, may at the same time be sentenced to two periods of imprisonment, the second to commence after the expiration of the first."*

A.D. 1769. The Douglas cause.

But Lord Camden attracted chief notice while Chancellor by his judgment in the great Douglas cause, which, in Scotland, had almost led to a civil war between the supporters of the opposite sides; and in England even had excited more interest than any question of mere private right had ever done before. Archibald Douglas, the appellant, had been brought up as the son of Lady Jane Douglas, and her husband Sir John Stewart,—being supposed, along with his twin-brother Sholto, who died an infant, to have been born in Paris,—when their mother, after having long been married and remained childless, was in her forty-ninth year;—and, if such was his birth, he had a right to the immense estates of his maternal grandfather the late Duke of Douglas, and was the heir general of the Douglas family, one of the most illustrious in Europe. The Duke of Hamilton, the heir male of the Douglas's, and in default of issue of the Lady Jane, entitled to all their domains, as well as those of the Hamiltons, which he inherited through a female, insisted that these two children were spurious, and had been purchased from a glass manufacturer and a rope-dancer at Paris,—brought an action in the Court of Session in Scotland to establish his right,—and there had a majority of the Judges in his favour.† The appeal was heard in the session of 1769, and drew vast crowds to the bar of the House of Lords to listen to the weighty and eloquent argumentation of Thurlow, Wedderburn, and the other most eminent advocates of the age. It was conjectured that the law Lords were for the appellant, but the great body of the Peers had attended the hearing of the appeal, and were to take part in the decision; there had been

* Being convicted on this information, and on another for composing and publishing the "Essay on Woman," besides being fined, he was sentenced on the first to be imprisoned ten calendar months, and on the second to be imprisoned twelve calendar months, to be computed from the determination of the first imprisonment."

† The fifteen Judges of the Court of Session divided 8 to 7—the Lord President Dundas being in the majority.

much canvassing for the "Douglases" and the "Hamiltons," and a great degree of suspense existed down to the very morning of the judgment. CHAP. CXLIV.

It astonishes us very much to be told, that when the order of the day had been read by the Clerk, for the further consideration of the cause of the *Duke of Hamilton* v. *Douglas*, the Duke of Newcastle spoke first, and that "he was answered by Lord Sandwich, who spoke for three hours with much humour, and scandalised the Bishops, having, with his usual industry, studied even the midwifery of the case, which he retailed with very little decency." * Feb. 27. 1769.

Lord Camden then thus began,—there being such silence while he spoke, that a handkerchief would have been heard to drop, notwithstanding the crowds in attendance: † "My Lords, the cause before us is, perhaps, the most solemn and important ever heard at this bar. For my own share, I am unconnected with the parties; and having, with all possible attention, considered the matter, both in public and private, I shall give my opinion with that strictness of impartiality to which your Lordships have so just and equitable claim. We have one short question before us,—Is the appellant the son of the late Lady Jane Douglas, or not? I am of the mind that he is; and own that a more ample and positive proof of the child's being the son of a mother never appeared in a court of justice, or before any assize whatever." After very ably stating the *primâ facie* case from the marriage of the parents, and their acknowledging the appellant as their son, he minutely analysed the evidence to contradict and to corroborate it, and thus (*rondeau fashion*) concluded,—"The question before us is short, 'Is the appellant the son of Lady Jane Douglas, or not?' If there be any Lords within these walls who do not believe in a future state, these may go to death with the declaration that they believe he is not. For Lord Camden's judgment.

* Horace Walpole's "Memoirs of George III.," vol. iii. 303.

† "Lord Mansfield, it had long been discovered, favoured the Douglases; but the Chancellor Camden, with dignity and decency, had concealed his opinion to the very day of the decision."—*Horace Walpole's Memoirs of George III.* vol. iii. 303.

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my part, I am for sustaining the positive proof, which I find weakened by nothing brought against it: and, in this mind, I lay my hand upon my breast, and declare that, in my soul and conscience, I believe the appellant to be her son." *

Lord Mansfield followed — *haud passibus æquis* — making the worst speech he ever delivered — so bad a speech as to bring suspicion upon the judgment — for he did little more than dwell upon the illustrious descent of the Lady Jane, and the impossibility of any one with such a pedigree being guilty of such a fraud as palming a supposititious child upon the world. † The House agreed to the reversal without a division, but five lay Peers signed a protest recording their opinion that "the appellant was proved not to be the son of Lady Jane Douglas." ‡

Lord Camden's exercise of his judicial patronage.

Before finally quitting Lord Camden's Chancellorship, I must advert to the manner in which he disposed of his judicial patronage — always an important consideration in scan-

* See George Hardinge's striking account of this speech, Appendix, post.

† It is hardly possible that the account we have of Lord Mansfield's speech on this occasion can be full and correct, particularly as it does not contain the charges against Andrew Stewart, which were made the subject of the famous "Letters."

Horace Walpole's account of the Douglas cause.

‡ Horace Walpole thus states the result: —"The Chancellor then rose, and with leading authority and infinite applause told the Lords that he must now declare that he thought the whole plea of the Hamiltons a tissue of perjury woven by Mr. Andrew Stewart, and that, were he sitting as judge in any other Court, he would order the jury to find for Mr. Douglas; and that, what that jury ought to do on their oaths, their Lordships ought to do on their honours. This speech, in which it was allowed he outshone Lord Mansfield, had the most decisive effect. The latter, with still more personal severity to Stewart, spoke till he fainted with the heat and fatigue. At ten at night the decree was reversed without a division."— *Memoirs of George III.* vol. iii. 304.

Merits of the Douglas cause.

I believe the general opinion of English lawyers was in favour of the decision of the Court of Session in Scotland; but this was produced a good deal by Lord Mansfield's wretched argument, and the very able letters of Andrew Stewart, the Duke of Hamilton's agent, whose conduct had been severely reflected upon. I once studied the case very attentively, and I must own that I came to the conclusion that the House of Lords did well in *reversing*. There was undoubtedly false evidence in support of the appellant; but it would have been too much in such a case to act upon the maxim, "false in one thing, false in all things," so as to deprive him of his birthright from misconduct to which he was not privy. There seems to be no doubt that the Lady Jane, notwithstanding her advanced age, subsequently to the birth of the appellant, was pregnant, and had a miscarriage; and insuperable difficulties attended the theory of his being the son of Madame Mignon. Being in possession of his *status*, I think the evidence was insufficient to deprive him of it — and the strong family likeness satisfactorily established seems to prove that the conclusion of law concurred with the fact of his physical origin.

ning the merits or demerits of Chancellors; and I am happy to say, that instead of corrupting or enfeebling the bench by political job, or personal favour, he acted steadily for the public good, on the maxim, *Detur digniori.* When about to leave the Common Pleas, he succeeded in having the learned and virtuous Sir Eardley Wilmot appointed to succeed him — whom he thus addressed:

Letter from Lord Camden to Sir Eardley Wilmot, offering him the Chief Justiceship of the Common Pleas.

"5th August, 1766.

"I have the King's orders to acquaint you with his intention of removing you to the Chief Justiceship of the Common Pleas, if it be agreeable to you. As Mr. Morton is not yet determined to yield up to you the Chief Justiceship of Chester, I would advise you to *repose yourself in the Common Pleas* till that desired event happens. *I assure you it is a place of perfect tranquillity.* I do most sincerely congratulate you on this nomination, and beg leave to inform you that you owe as much to Lord Northington and to Lord Chatham as to myself. I have been under a treaty with George Cooke ever since I came to town, the particulars of which you shall know when you come. I have withstood his bribe, being determined never to defraud my successor upon my death-bed: his necessities are extreme as well as my punctilio: However, it is now in your hands rather than in mine*; for I do not consider myself any longer in conscience, though I am in law, Chief Justice of the Common Pleas.

"I am with great truth, &c.

"CAMDEN."

Nullum Tempus Act.

The times were too distracted to allow of any systematic amendment of the law; but it should be recorded that, under the auspices of Lord Chancellor Camden, passed the "Nullum Tempus Act," by which an adverse enjoyment of property for sixty years gave a good title against the Crown, whereas the maxim had before prevailed, "*nullum tempus occurrit Regi,*— according to which obsolete claims might be set up,

* This relates to an office in the Court which then, and long after, the Chief Justice might lawfully sell.

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and vexatious proceedings instituted by the government against political opponents.*

The Grenville Act.

About the same time likewise passed the famous "Grenville Act," by which the decision of contested elections was transferred from the House of Commons as a body, to select Committees sworn to do justice between the parties.† The chief merit of the measure belongs to its author whose name it bears, but from his colleague at the head of the law he had encouragement and assistance in preparing it.

Thus Lord Camden, while in office, must be allowed to have deserved well of his country. He rendered her still more important services when reduced to a private station.

* Stat. 9 Geo. 3. c. 16.

† 10 Geo. 3. c. 16.

# CHAPTER CXLV.

CONTINUATION OF THE LIFE OF LORD CAMDEN TILL HE WAS FIRST APPOINTED PRESIDENT OF THE COUNCIL.

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Lord Camden's vindication of his conduct while in office.

PASSING over for the present the intrigues for the disposal of the Great Seal, which accompanied and followed Lord Camden's resignation of it, we must now regard him as an opposition leader, banded with Lord Chatham, Lord Rockingham and other Whig Peers, strenuously to resist the measures of the new government with Lord North at the head of it. At the commencement of their operations he was placed rather in an awkward predicament in a debate which arose on Lord Marchmont's famous midnight motion*, "that any interference of the Lords respecting the Middlesex election would be unconstitutional." Lord Chatham having bitterly reflected on the measures of the government respecting Wilkes, Lord Sandwich took occasion to charge the late Chancellor with duplicity of conduct, because he had permitted those proceedings which had given so much disgust, and which he and his friends now so loudly condemned. Lord Camden answered him, by declaring upon his honour, "that long before Mr. Wilkes's expulsion, and also before the vote of incapacity, on being asked his opinion by the Duke of Grafton, he had pronounced it both illegal and imprudent,"—adding that "he had always thought so, and had often delivered his opinion to that effect."† The Duke of Grafton, however, declared that although the Chancellor had once before the expulsion said it would be impolitic or ill-timed, he never had expressed his sentiments on the vote of incapacity, but whenever that subject was agitated he had withdrawn from the council board, thereby declining to give

* It was on this occasion that Lord Chatham exclaimed, "If the constitution must be wounded, let it not receive its mortal stab at this dark and midnight hour."

† As far as the original expulsion goes, Lord Camden had forgotten his first opinion. Ante, p. 274.

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any opinion upon it; and Lord Weymouth, another member of the Cabinet, asserted that the Chancellor had withheld his advice and assistance from his colleagues on every mention of expulsion and incapacity. — *Lord Camden.* "Before the silence to which the noble Lords allude, I had repeatedly given my opinion upon the impropriety of the measures we have been discussing. But when I found that my opinion and my advice were rejected and despised, and that these measures were to be pursued in spite of every remonstrance I could make, I did withdraw myself—under the conviction that my presence would only distract, without preventing them. I was never farther consulted upon them directly or indirectly, because my opinion was well known—but I was ever ready to express my opinion boldly and openly on every question debated in Council, and humbly, but firmly to give my best advice to my Sovereign for the public good."*

Lord Camden's opinion on the question of the Middlesex election.

When Lord Chatham introduced his bill for reversing the decision of the House of Commons, which disqualified Mr. Wilkes, and seated Mr. Lutterell as member for Middlesex, Lord Camden warmly supported it against the vigorous attacks of Lord Mansfield. After stating the course pursued, he thus proceeded: "What, then, hindered the House from receiving Mr. Wilkes as their member? I am ashamed to guess at it, — merely because they would act in an arbitrary, dictatorial manner, in spite of law or precedent, against reason and justice. A secret influence had said the word — '*Mr. Wilkes shall not sit,*' and the *fiat* was to be obeyed, though it tore out the heart-strings of this excellent constitution. The judgment passed upon the Middlesex election is a more tyrannical act than any which disgraced the twelve years' suspension of Parliaments in the reign of Charles I.; and, though this bill may be rejected (as we are all sensible how a majority can supersede reason and argument), I trust in the good sense and spirit of the people of this country — that they will renew the claim of their inherent and inalienable right to a true and free representation in Paliament."†

* 16 Parl. Hist. 824.

† 16 Parl. Hist. 963. 1306. No other discussion respecting Lord Camden's conduct while Chancellor, or his dismission, appears in the printed parliamentary debates. But the Duke of Grafton, in his Journal, says: "At this time Lord

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His controversy with Lord Mansfield respecting the rights of juries on trials for libel.

Dec. 10. 1770.

Soon after arose the personal controversy between Lord Camden and Lord Mansfield, respecting the law of libel. A motion having been made in the House of Commons, respecting the direction given to the jury on the trial of Woodfall, for publishing JUNIUS's "Letter to the King," Lord Mansfield desired that the House of Lords might be summoned, as "he had something to communicate to their Lordships." On the day appointed, he contented himself with saying, that he had left a paper with the Clerk of the House; that the paper contained the opinion of the Court of King's Bench, in the case of *Rex* v. *Woodfall;* and that their Lordships might read it, and take copies of it if they pleased. Lord Camden asked him if he meant to have the paper entered on the Journals. He said, "No, no! only to leave it with the Clerk."—*Lord Camden.* "My Lords, I consider the paper delivered in by the noble Lord on the woolsack* as a challenge directed personally to me, and I accept it; he has thrown down the glove, and I take it up. In direct contradiction to him, I maintain that his doctrine is not the law of England. I am ready to enter into the debate whenever the noble Lord will fix a day for it. I desire and insist that it may be an early one. Meanwhile, I propose the following questions to the noble and learned Lord upon his paper, to each of which I expect an answer." He then read six questions respecting the Chief Justice's notions as to the jury being at liberty to consider whether the paper, charged to be libellous, be of a criminal or innocent character. Lord Mansfield replied that "this mode of proceeding was taking him by surprise; that it was unfair; and that he would not answer interrogatories." Lord Camden then pressed for a day to be appointed for the noble and learned Lord to give in his answers, and said he was ready to meet him at any time. Lord Mansfield pledged

Chatham's virulence seemed to be directed against myself: he persisted for some days in the intention of charging me in parliament with having advised the removal of Lord Camden, on account of his vote in the House; nor was he dissuaded from this till Lord Camden had assured him that he knew so perfectly that the advice did not come from me, that he should, if his Lordship made the motion, think it incumbent on him to rise in his place and declare that he well knew it was not from my advice."

* The Seals were now in commission, and Lord Mansfield presided as Speaker in the House of Lords.

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himself, that the matter should be discussed. The Duke of Richmond, having congratulated the House on the prospect before them, begged that the day might be fixed. — *Lord Mansfield.* "I have only said I will hereafter give my opinion; and as to fixing a day, I will not fix a day." The matter here dropped, and never was resumed, Lord Mansfield's want of moral courage holding him back from a renewal of the contest, and Lord Camden thinking that he had gained a sufficient triumph.*

The morning after this encounter, he received the following kind and flattering inquiry from Lord Chatham: —

"Pall Mall, Wednesday.

"My dear Lord,

"I am anxious to know how you do after the noble exertion of yesterday. What your Lordship did was transcendent, and as you were not quite well I am solicitous to hear of you; — though, after recollection, I think I ought to enquire how my Lord Mansfield does." †

The Ex-chancellor continued most zealously to discharge his public duty, and was indefatigable in his attendance in the House of Lords, and in hearing causes in the Privy Council, when summoned to attend there; but till the rupture with the American colonies was approaching, he seems from this time seldom to have taken a prominent part in the debates.

Lord Camden's opinion of the Royal Marriage Act.

When the Royal Marriage Act was brought forward in 1772, he strongly opposed it. He admitted that some regulations were necessary to prevent the misalliance of those near to the throne; but he disapproved of the proposed enactments, and he strongly pointed out the inconvenience and injustice which might arise from the proposal to extend them to all the descendants of George II., who, according to the common process of descent, might be expected in a few generations to extend to many thousands. He mentioned that he knew an undoubted legitimate descendant of a King of England who was then keeping an alehouse.—His manliness deserves great

* 16 St. Tr. 1317. 1321.
† MSS. of the present Marquis Camden.

credit, considering that the reigning Sovereign was resolved to carry the bill as originally framed, against the advice of several of his Ministers,—and had expressed himself personally offended with all who questioned its wisdom.

His speech on "Literary property."

In 1774, came on judicially in the House of Lords the great question of literary property,—"whether, at common law, authors have a perpetual copyright in their works?" Lord Camden denied the claim; and, on his opinion, the judgment was pronounced, by which only a limited monopoly is enjoyed, as conferred by the legislature. I give a specimen of his speech, which has been loudly praised, but which I must own appears to me, though founded on right principle, to be rather declamatory: "If there be any thing in the world common to all mankind, science and literature are in their nature *publici juris*, and they ought to be free and general as air or water. They forget their Creator as well as their fellow-creatures, who wish to monopolise his noblest gifts and greatest benefits. Why did we enter into society at all, but to enlighten one another's minds, and improve our faculties for the common welfare of the species? Those great men, those favoured mortals, those sublime spirits, who share that ray of divinity which we call *genius*, are intrusted by Providence with the delegated power of imparting to their fellow-creatures that instruction which Heaven meant for universal benefit: they must not be niggards to the world, or hoard up for themselves the common stock. We know what was the punishment of him who hid his talent; and Providence has taken care that there shall not be wanting the noblest motives and incentives for men of genius to communicate to the world the truths and discoveries, which are nothing if uncommunicated. Knowledge has no value or use for the solitary owner; to be enjoyed, it must be communicated: *scire tuum nihil est, nisi te scire hoc sciat alter.* Glory is the reward of science; and those who deserve it scorn all meaner views. I speak not of the scribblers for bread, who tease the world with their wretched productions; fourteen years is too long a period for their perishable trash. It was not for gain that Bacon, Newton, Milton, Locke, instructed and delighted the world. When the bookseller

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offered Milton five pounds for his PARADISE LOST, he did not reject the offer and commit his piece to the flames, nor did he accept the miserable pittance as the reward of his labours; he knew that the real price of his work was *immortality*, and that posterity would pay it. Some authors are as careless of profit as others are rapacious of it, and in what a situation would the public be with regard to literature if there were no means of compelling a second impression of a useful work? All our learning would be locked up in the hands of the Tonsons and Lintots of the age, who could set what price upon it their avarice chooses to demand, till the whole public became as much their slaves as their own wretched hackney compilers." * — He afterwards opposed the bill introduced to extend the period of copyright †, and it was thrown out. But I think he was romantically unjust to literary men, and the controversy is at last well settled by the exertions of my friend Serjeant Talfourd ‡ — so that literature may now be pursued as a liberal profession, offering to those who succeed in it the means of honourable support, and of making an adequate provision for their families.

After the time when Lord Camden was removed from the office of Chancellor till the Duke of Grafton quitted office and joined the opposition in 1776, they were political enemies, but they continued private friends. I will here introduce a few extracts from the letters of the former, showing the familiar intimacy which subsisted between them.

June 19. 1771. Lord Camden's correspondence with the Duke of Grafton while they were opposed to each other in politics.

The Ex-premier having accepted the office of Lord Privy Seal under Lord North, the Ex-chancellor sent him a letter of congratulation, in which he says: "If I was not more afraid of public calumny than of any private or particular displeasure, I should certainly, as I intended, pay my respects to your Grace next week, which your Grace must now excuse me from doing, because that would look more like courting your fortune than seeking your friendship. Notwithstanding which I shall still hold myself engaged, if you please, to spend a day with your Grace at Wakefield Lodge some

* 17 Parl. Hist. 992., *Donaldson* v. *Becket*. † Ib. 1402.
‡ Stat. 5 & 6 Vic. c. 45.

time in the summer. And when every body sees, as they will in a month or two, that I am neither partaking your good fortune, nor paying homage to it in the moment of your preferment, I shall set at nought every other suspicion that jealousy and malversation may raise against my conduct."

To an invitation from the Duke to visit him, Lord Camden returned the following answer: "Your Grace is too great a man to feel the comfort of so private a retreat as I am enjoying, and of not being under the daily temptation of a plentiful table, when the digestion always suffers in proportion as the appetite is provoked. I am advancing apace towards the state of a steady and invincible abstinence, and begin to think I may be able to withstand all the allurements both of meat and drink. But I am sure to be in danger the moment I set my foot in Wakefield Lodge. If I should find myself sufficiently fortified to meet and resist this temptation by the month of August, I shall endeavour to take advantage of your Grace's invitation, for I should be extremely happy to keep alive that friendship which had commenced in politics, and has never been violated, though unluckily interrupted, by the same cause." Deal, June 23. 1755.

The next letter in the series is without date, but must have been written soon after:—"Mine and your Grace's old friend, the Earl of Chatham, still continues extremely ill. I am satisfied from the account I hear from time to time (for he sees nobody), he can never recover his health so far as to be fit for any active business,—so miserably is he reduced by age and sickness. I am, thank God, remarkably well, but your Grace must not seduce me into my former intemperance. A plain dish, and a draught of porter (which last is indispensable) are the very extent of my luxury. I have suffered a good deal, and have studied stomach disorders to such purpose, that I think I am able to teach your Grace (who are yet young) how to arrive at a strong and healthy old age,—which, I hope, will be your lot for the sake of the public as well as of your friends." A.D. 1775.

When the Duke of Grafton, seeing the injustice of the American war, and alarmed by the unskilful manner in which it was carried on, joined Lord Chatham, Lord Rock- Lord Camden and the Duke of Grafton co-

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operating in opposition.

Jan. 4. 1776.

ingham, and Lord Shelburne, in trying to put an end to it, Lord Camden again wrote to him, with the most unbounded confidence on all subjects. The following is the desponding view taken by the Ex-chancellor of public affairs in the beginning of the year 1776:—"I am so satisfied of the efficacy of Bath for my constitution, that I am determined to make it another visit next spring; nor shall any consideration of politics restrain me; for, indeed, my dear Lord, the chances of doing good is at an end. So many circumstances have combined, like so many fatalities, to overturn this mighty empire, that all attempts to support it are weak and ineffectual. Who could have imagined that the ministry could have become popular by forcing this country into a destructive war, and advancing the power of the crown to a state of despotism? And yet that is the fact, and we, the minority, suffer under the odium due only to the ministers, without the consolation either of pay or power. America is lost, and the war afoot. There is an end of advising preventive measures, and peace will be more difficult to make than war was. For your Grace justly observes that the claims of the Americans, if they are successful, will grow too big for concession, and no man here will venture to be responsible for such a treaty. For I am persuaded it will be the fate of England to stoop, though I do not know the minister to apply so humiliating a remedy. Shall we ever condescend to make that country a satisfaction for damages? and yet she will never treat without it. What, then, must be our conduct in Parliament? I am at a loss to advise. I thought from the beginning of the year secession was the only measure left. I still think the same: but I will enter the lists of a more active opposition if that shall be thought best. I wish it were possible for the whole body to unite; but union is only understood and practised on the other side of the Atlantic. That would be respectable, and perhaps formidable; but I do not expect to see it. Absence would look more like union to the public, and might, perhaps, join us at last into a confederacy.* If motions are to be made,

Lord Camden's views respecting the contest with America.

* It is surprising to find this great constitutional lawyer recommending secession from parliament — a measure wrong in principle, and which has invariably been injurious to the party resorting to it.

they should be in concert, and we ought to protect and defend each other from attacks, like real friends: else, like other broken forces, we shall be put to the rout."

Jan. 7. 1776.

A few days after, Lord Camden added:—"I shall persist to the last in giving my testimony against this pernicious war, though I neither expect success nor popular applause, but it will be no inconsiderable consolation to hear my name joined to your Grace's, let the event turn out as it may."

Lord Camden's sentiments on the American declaration of "Independence."

In the autumn of this year Lord Camden visited Ireland, where he had a daughter married to Mr. Stewart, the ancestor of the present Marquess of Londonderry. Thence he thus addressed the Duke of Grafton: "The colonies have now declared their independence. THEY ARE ENEMIES IN WAR AND FRIENDS IN PEACE; and the two countries are fairly rent asunder. What then are we?—mere friends or enemies to America. Friends to their rights and privileges as fellow-subjects, but not friends to their independence. This event does not surprise me: I foresaw it. The Ministers drove it on with a view of converting a tyrannical and oppressive invasion into a national and necessary war; and they have succeeded too well: and now I expect the opposition will be called upon to join with them in one cause, and we shall be summoned as Englishmen to unanimity. But if your Grace should see a French war to grow out of this civil dispute, which I expect and believe to be unavoidable, our provinces will then be leagued with our enemies in an offensive war against Great Britain. In such a situation a private man may retire, and lament the calamities which he endeavoured faithfully to prevent. But how can he give an active opposition to measures that self-preservation will then stamp with necessity? I have but one line to pursue if I am to bear my part, and that is a reunion with America, almost at any rate. '*Si possis, recte: Si non, quocunque modo.*' But I do not expect the ministry, the parliament, or the nation, will adopt any such system. So that what with the general fear in some of incurring the popular odium, and in others of seizing this opportunity '*to make their fortunes by shifting their position*,' according to

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Lord Suffolk's phrase,—the minority next winter will dwindle to nothing."

Jan. 7. 1777. Lord Camden's despondence.

In the beginning of 1777, he writes: "From politics, my dear Lord, I am almost entirely weaned. I cannot prevail upon myself to go with the tide, and I have no power to struggle against it. War must now decide the question between the two countries, both sides having too much offended to be ever forgiven. But hopeless as I am, I shall be always at your Grace's command, and ready to contribute my poor endeavours for the public. And yet I suspect I shall spend more time this year at the play-house and opera than the House of Lords."

His exertions in parliament for reconciliation.

Notwithstanding Lord Camden's despair, arising from the violent councils adopted by the government, and the passion for coercing the colonists which still prevailed in the nation, he nobly seconded Lord Chatham in all the efforts of that illustrious patriot to bring about a reconciliation between the mother country and the colonies. He spoke at great length in every debate upon America, and many of his speeches during this interval are preserved. But although they were most exciting when delivered, the interest of them has nearly died away, and I can only venture to give a few extracts from them to show their extraordinary merit.

His speech on the New England Coercion Bill.

In opposing the bill for cutting off commerce with the New England States which so soon led to hostilities, he said, "Some of your Lordships inform us that it is a bill of mercy and clemency,—kind and indulgent to the Americans,—calculated to soothe their feelings, and to favour their interests. But, my Lords, the true character of the bill is violent and hostile. My Lords, it is a bill of irritation and insult. It draws the sword, and in its necessary consequences plunges the empire into civil and unnatural war." *

Nov. 15. 1777. His defence of the Americans.

On the Duke of Grafton's motion respecting the British forces in America, he said, "I was against this unnatural war from the beginning. I was against every measure that has reduced us to our present state of difficulty and distress. When it is insisted that we aim only to defend and enforce

* 18 Parl. Hist. 436.

our own rights, I positively deny it. I contend that America has been driven by cruel necessity to defend her rights from the united attacks of violence, oppression, and injustice. I affirm that America has been aggrieved. Perhaps, as a domineering Englishman wishing to enjoy the ideal benefit of such a claim, I might urge it with earnestness and endeavour to carry my point; but if, on the other hand, I resided in America — that I were to feel the effect of such manifest wrong, I should resist the attempt with that degree of ardour so daring a violation of what should be held dearer than life itself ought to enkindle in the breast of every freeman." * Speaking a second time in this same debate, after he had been loudly reproached for the violence of his language, he said: "Till I am fairly precluded from exercising my right as a Peer of this House, of declaring my sentiments openly, of discussing every subject submitted to my consideration with freedom, I shall never be prevented from performing my duty by any threats, however warmly and eagerly supported or *secretly suggested.* I do assure your Lordships I am heartily tired of the ineffectual struggle I am engaged in. I would thank any of your Lordships that would procure a vote of your Lordships for silencing me; it would be a favour more grateful than any other it is in the power of your Lordships to bestow; but until that vote has received your Lordships sanction, I must still think, and, as often as occasion may require, continue to assert that Great Britain was the aggressor, that our acts with respect to America were oppressive, and that if I were an American I should resist to the last such manifest exertions of tyranny, violence, and injustice." †

Lord Chatham falls senseless from his horse.

Lord Camden, in his correspondence with the Duke of Grafton, afterwards gives an account of a serious illness of Lord Chatham which was kept secret from the world, and seems to have been a prelude to the closing scene of his glorious career. In a P. S. to a letter, dated July 27. 1777, he says, "Since I wrote this I have received a melancholy

* 18 St. Tr. 947.

† Ib. 954. See also 18 Parl. Hist. 36. 164. 209. 271. 292. 422. 436. 454. 656. 675. 811. 901. 953. 1222. 1278. 1284.; vol. xix. 337. 394. 625. 640. 652. 664. 738. 860.

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account of a stroke received to-day by Lord Chatham, as he was riding. He fell from his horse, and lay senseless for ten minutes. The message to-night is, that he is very much recovered. Whether this was apoplectic, paralytic, or gout in the stomach, I cannot learn. I wish it may not prove fatal. The public has lost him, and I fear he and England will perish together."

Oct. 29. 1777. Lord Chatham's recovery, and his plans.

In a few weeks after he gives this statement of Lord Chatham's recovery and of his plans: "I thought it better to wait till I could give you some satisfactory account of my neighbour, Lord Chatham's health, and his intentions at the opening of parliament. If your Grace thinks as I do that the Earl's recovery may, upon some possible event, give a new turn to public affairs, you will not be sorry to hear that he is now (though it seems almost miraculous), in bodily health and in mental vigour, as equal to a strenuous exertion of his faculties as I have known him these seven years. His intention is to oppose the address, and declare his opinion very directly against the war, and to advise the recalling the troops; and then propose terms of accommodation wherein he would be very liberal and indulgent, with only one reserve and exception, viz. that of subjection to the mother country: for he never could bring himself to subscribe to the independence of America. This, in general, will be his line, and this he will pursue if he is alone. I should imagine your Grace would have no objection to concur with this plan, though it is certain before hand that all the breath will be wasted, and the advice overruled by numbers. Yet it would be right to stand firm upon the same ground, and not depart an inch from our steady purpose of opposing this war for ever. Thus much I thought it my duty to impart to your Grace. For my own part, I still continue in the same state of despondency, hoping nothing and fearing every thing."

Death of Lord Chatham.

On the memorable 7th of April, 1778, when Lord Chatham fell senseless on the floor of the House of Lords in a dying effort to save his country, Lord Camden who was prepared to follow him in the debate, immediately ran to his relief and joined in the vote of adjournment to which the House immediately came. A few days after, in a letter to the Duke

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of Grafton, he wrote the following account — the most graphic and the most authentic extant — of that solemn scene:

"April, 1778, N. B. Street.

"My dear Lord,

His letter giving an account of this event.

"I cannot help considering the little illness which prevented your Grace from attending the House of Lords last Tuesday to have been a piece of good fortune, as it kept you back from a scene that would have overwhelmed you with grief and melancholy, as it did me and many others that were present: I mean Lord Chatham's fit, that seized him as he was attempting to rise and reply to the Duke of Richmond; he fell back upon his seat, and was to all appearance in the agonies of death. This threw the whole House into confusion; every person was upon his legs in a moment, hurrying from one place to another, some sending for assistance, others producing salts, and others reviving spirits. Many crowding about the Earl to observe his countenance — all affected — most part really concerned; and even those who might have felt a secret pleasure at the accident, yet put on the appearance of distress, except only the Earl of M.*, who sat still, almost as much unmoved as the senseless body itself. Dr. Brocklesby was the first physician that came; but Dr. Addington in about an hour was brought to him. He was carried into the Prince's chamber, and laid upon the table supported by pillows. The first motion of life that appeared was an endeavour to vomit, and after he had discharged the load from his stomach that probably brought on the seizure, he revived fast. Mr. Strutt prepared an apartment for him at his house, where he was carried as soon as he could with safety be removed. He slept remarkably well, and was quite recovered yesterday, though he continued in bed. I have not heard how he is to-day, but will keep my letter open till the evening, that your Grace may be informed how he goes on. I saw him in the Prince's chamber before he went into the House, and conversed a little with him, but such was the

* It appears by the Journals that there were only two Earls bearing titles beginning with an M. present that day — the Earl of Marchmont and the Earl of Mansfield. I am much afraid that the latter is alluded to.

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feeble state of his body, and indeed the distempered agitation of his mind, that I did forbode that his strength would certainly fail him before he had finished his speech. In truth, he was not in a condition to go abroad, and he was earnestly requested not to make the attempt; but your Grace knows how obstinate he is when he is resolved. He had a similar fit to this in the summer; like it in all respects, in the seizure, the reaching, and the recovery; and after that fit, as if it had been the crisis of the disorder, he recovered fast, and grew to be in better health than I had known him for many years. Pray heaven that this may be attended with no worse consequences. The Earl spoke, but was not like himself; his speech faltered, his sentences broken, and his mind not master of itself. He made shift, with difficulty, to declare his opinion, but was not able to enforce it by argument. His words were shreds of unconnected eloquence, and flashes of the same fire which he, Prometheus-like, had stolen from heaven, and were then returning to the place from whence they were taken. Your Grace sees even I, who am a mere prose man, am tempted to be poetical while I am discoursing of this extraordinary man's genius. The Duke of Richmond answered him, and I cannot help giving his Grace the commendation he deserves for his candour, courtesy, and liberal treatment of his illustrious adversary. The debate was adjourned till yesterday, and then the former subject was taken up by Lord Shelburne, in a speech of one hour and three quarters. The Duke of Richmond answered; Shelburne replied; and the Duke, who enjoys the privilege of the last word in that House, closed the business, no other Lord, except our friend Lord Ravensworth, speaking one word; the two other noble Lords consumed between three and four hours. And now, my dear Lord, you must with me lament this fatal accident; I fear it is *fatal*, and this great man is now lost for ever to his country; for after such a public and notorious exposure of his decline, no man will look up to him, even if he should recover. France will no longer fear him, nor the King of England court him; and the present set of ministers will finish the ruin of the state, because, he being in effect superannuated, the public will call for no other men. This

is a very melancholy reflection. The opposition, however, is not broken, and this difference of opinion will wear off; so far, at least, the prospect is favourable. I think I shall not sign the protest, though, in other respects, I shall be very friendly. I have troubled your Grace with a deal of stuff, but the importance of the subject will excuse me.

"Your Grace's, &c.

"CAMDEN.

"P. S. I understand the Earl has slept well last night, and is to be removed to-day to Downing Street. He would have gone into the country, but Addington thinks he is too weak."

On the day when the debate was resumed, Lord Camden was silent; and it was remarked, that thenceforth during the rest of the struggle with America, being deprived of his great associate,—from grief, or despair of doing good, he hardly ever addressed the House.

His eulogy on Lord Chatham.

However, when the Bill to mark the gratitude of the nation for the immortal services of Lord Chatham was opposed by the Lord Chancellor Apsley, although the King professed to approve of it, Lord Camden's indignation burst forth, and he exclaimed, "The noble and learned Lord on the woolsack has praised very deservedly — I hope with no insidious intention — the memory of the Duke of Marlborough — but seems entirely to have forgotten the victories of the deceased Earl. I will remind the noble and learned Lord that while he, who it is now wished to treat with neglect, as *if by some accident alone he had been elevated to an office he was incompetent to fill*, ruled the destinies of this mighty empire, from the extremest east to the setting sun — in every quarter of the globe — to earth's remotest bounds — were the arms of England borne triumphant; — our operations on the sea and on the land were invariably accompanied by extension of territory and extension of commerce, and we had at once all the glories of war and all the enjoyments of peace. But, my Lords, what I consider a more substantial claim to your admiration and your gratitude, he was ever the assertor of liberty

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and the defender of the rights of Englishmen at home and abroad. Had his advice been followed, the country would now have been free, tranquil, and happy; and it is only by returning to his principles that we can be rescued from the state of degradation and suffering to which, by despising them, we have been reduced."* It is not very creditable to the House that, at the division, the attendance of Peers was so small; — perhaps the dinner hour had arrived; — but the Bill was carried by a majority of 42 to 11.

His denunciation of the manner in which the war was conducted.

Lord Camden warmly supported Lord Rockingham's motion for a censure on the manifesto of our Commissioners in America which put the country under martial law — when he took occasion to reprobate the cruel manner in which hostilities were conducted, and still more the arrogant tone in which this cruelty was defended: "Were not tomahawks and scalping-knifes considered the proper instruments of war? Was not letting loose savages to scalp and murder the aged and the impotent, called *using the instruments of war which God and nature have put into our hands.*" Then, in the spirit of his departed friend, he counselled that, instead of trying to lay waste America, we should immediately strike a blow against France, evidently preparing to take part against us. "Distress France," said he; "render her incapable of assisting America. Attack France immediately: attack her powerfully by sea. England is still mistress of the ocean. To wound America is to wound ourselves. To aim a blow at France, is to prevent a blow from being aimed at us by an inveterate enemy." The motion being negatived by 71 to 37, he drew up a spirited protest which was signed by almost all the Whig Peers.†

Aug. 4. 1778. Lord Camden on the intentions of France and Spain.

When the indecisive engagement off Ushant took place in the summer of 1778, Lord Camden, in a letter to the Duke of Grafton, showed much sagacity in penetrating the intentions of France and Spain to assist the Americans: "Keppel's engagement with the French fleet is only the beginning of this cursed war. I don't apprehend the French avoided the action through fear but policy, and that they came out of

* 19 Parl. Hist. 1239.

† 2 Parl. Hist. 43.

Brest only to provoke Keppel to make the first assault, so as to be justified in America, by maintaining England to be the aggressor, and so to bring the war within the case of their treaty of alliance, by which America is bound to assist, and, indeed, to be a principal in the French war, and Keppel's chasing will be called the *first assault.* These are my politics, for I am, as I always have been, persuaded that France was determined at all events to make the war, and I am equally certain that Spain will join, notwithstanding the Spanish ambassador's journey hither, which is no better than an imposture, and that too shallow to impose on any but children and our ministers."

He exposes the abuses in Greenwich Hospital.

In the Session of 1779, Lord Camden entered into a laborious exposure of the abuses of Greenwich Hospital, which were rendered famous as the subject of Lord Erskin's first speech at the bar;—and he was of essential service in rendering this noble establishment more serviceable to our brave seamen.

Lord Camden's effort to obtain justice for Ireland.

He then made an effort to obtain liberal measures for Ireland, which, being withheld, up sprang the volunteers, who petitioned with arms in their hands: "I hope and believe," said he, "notwithstanding the ill treament the Irish have received from this country which has brought upon them an accumulation of distresses and calamities, they will still retain their affection and attachment for England. Let us meet them with generous kindness. Nothing should be done by halves—nothing niggardly—accompanied with apparent reluctance."*

He defends his pension.

Soon after, in a debate on pensions and sinecures, being taunted about his own *pension,* or as we should call it "retired allowance," he said "he received it for long services, and in lieu of a valuable office (Chief Justice of the Common Pleas) and it would be a hardship to his family to lose it, and the reversion which was to supersede it; but if they must be included in a measure for clearing away abuses, he should rejoice in it, however the loss might distress him, when he

* 20 Parl. Hist. 1177. 670.

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reflected on the great and permanent advantages which would thereby accrue to his country."*

Sept. 16. 1779. He recommends a new course to be pursued by the Opposition.

In the autumn of this year Lord Camden proposed to the Duke of Grafton a new plan of operations to be pursued by the Opposition:—" A conversation with your Grace upon the state of the kingdom at present, will give me as much satisfaction as I am capable of receiving upon so hopeless a subject. If your Grace can suggest any plan of proceeding for the Opposition, likely to change the Court system or animate the public, I shall be happy to adopt as well as to promote it. For my own part, I confess fairly my own opinion that the opposition to the Court is contracted to a handful of men within the walls of parliament, and that the people without doors are either indifferent or hostile to any opposition at all. Whether this singular and unexampled state of the country is owing to a consciousness among the people that they are as much to blame as the Ministers, and are ashamed to confess their own error, or whether, in truth, they hold the Opposition so cheap as to think the kingdom would suffer instead of mending by the exchange, or from a combination of all these motives choose to suffer patiently rather than encounter the troubles that are apt to follow upon a general disturbance: whatever is the cause of that slavish resignation which is predominant at present, the fact is, they do not desire a change. What then is to be done in order to obtain some degree of popularity? I shall make a simple answer by saying, '*Nothing!*' and yet perhaps that nothing, if well conducted, might have a stronger operation than the vain repetition of those feeble efforts that have hitherto been made in parliament by perpetual wrangles, personal animosity, abuse, and bad language, for this attack has been returned twofold upon us, and has set the parties against each other like a couple of prize-fighters combating for the entertainment of the gazing public, who are greatly diverted by a blow soundly given or dexterously parried, without wish for the victory of either of the combatants. This has been the conduct of opposition hitherto. If, on the other hand, a firm and temperate opposition in short speeches,

* 20 Parl. Hist. 1363.

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few debates without rancour, could be established, such a course might probably restore us to the good opinion of the public, and then the distress of the times might work them into an opinion that the Opposition mean really the good of the whole. This or any idea may serve to talk of, but, to say the truth, I have no hopes left for the public, the whole people have betrayed themselves, and are not worth fighting for."

Lord Camden's speech on the Contractors' Bill.

In the session of 1780 Lord Camden delivered a very long and animated speech in answer to Lord Thurlow, now Chancellor, who was resolved to throw out a bill which the Commons had passed almost unanimously, to disqualify government contractors from sitting in their House. He began by observing that "his noble and learned friend on the woolsack had maintained his opposition to the bill in contradiction to the clearest principles of the constitution, indeed to every rule of common sense and common experience, and to the whole system of parliamentary jurisprudence. His noble and learned friend had expressed himself in very strong language against innovation, and had rallied their Lordships to the post of danger, as if the constitution were to be overturned; but might not the same opposition have been given in the same words to bills now universally acknowledged to be necessary to preserve the purity and efficiency of our representative system,—the Place Bill, the Pension Bill, and the Bill for disqualifying officers of the Excise or Customs from sitting in the other House, because they may be preferred or dismissed at the pleasure of the Crown? Would his noble and learned friend have called these measures '*idle and fanciful suggestions, the phrenzy of virtue and the madness of ideal perfection?*'" The bill was rejected by a majority of 61 to 41,—a decision which rendered the Lords very odious, the Commons a few days before having passed the famous resolution moved by Dunning,—"that the power of the Crown has increased, is increasing, and ought to be diminished."*

Jan. 23. 1781.

A debate took place, in the beginning of 1781, on the King's message relative to the rupture with Holland, which

* 21 Parl. Hist. 340. 414—459.

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Lord Camden's farewell speech on America.

rendered the situation of public affairs still more difficult and alarming. There being, as yet, no symptom of any change of policy on the part of the Government, Lord Camden, rising with great solemnity, and speaking in a tone of the deepest grief, said, "He rose from a call of duty, for the last time, and, whatever might be the event of this final effort to save his country, at least to mitigate her distresses and misfortunes, he should retire from his fruitless attendance in that House with this consolation, that he had discharged his duty to the best of his poor abilities so long as it promised to be productive of the smallest or remotest good, and that he declined giving their Lordships any further trouble where hope was at an end, and when zeal even had no object which could call it into activity. He regretted that he had not formed the resolution earlier, as he should thus have been saved from much chagrin and a series of the most mortifying disappointments, for he had been able, in no degree, to prevent or retard the ruin which now seemed impending." *

Nov. 27. His speech before Lord North's resignation.

He interfered no farther with any political question during this protracted session; but in the recess which followed there was such a loud expression of public opinion against the war, and such strong rumours were circulated of Lord North's wish to retire, that, when Parliament reassembled, he attended to make another effort for peace. His speech on supporting the amendment, moved by Lord Shelburne, was, I think, decidedly the best he ever delivered in Parliament, and it is fully and correctly reported; but, to its credit, there is no passage in it which I can select for quotation. Instead of aiming at fine sentences, (the sin which most easily beset him,) he confined himself to a simple and rapid narrative of facts, — from which he deduced the incapacity of ministers, and attempted to show that the only chance of saving the empire from final ruin, as well as dismemberment, was by an immediate change of men and of measures.

The extraordinary merit of this speech is said to be demonstrated by the eulogy which it extorted from the unwilling Thurlow who followed in the debate †; but, with more

* 21 Parl. Hist. 1060.

† See Lord Brougham's "Statesmen of George III." 3d series, 177.

doubtful claims to praise, it might possibly have been very favourably criticised by this dissembler, who, under the guise of bluntness, had ever a keen eye to his own advantage, and who, seeing a change approaching, was rather willing to soothe opponents, and to show that his enmities were placable. Whatever might be his motives, he thus began: "I must acknowledge, my Lords, the great abilities of the noble and learned Lord who has just sat down. I affirm that, to the best of my judgment, I never heard a more able discourse within these walls: the premises were openly and clearly stated, and the deductions followed without constraint or false colouring. I trust that the noble and learned Lord will receive these as my real sentiments, for I am not at any time much in the habit of travelling out of the business before the House, to keep up the trivial forms of debate—much less to pay particular personal compliments to any man." He then proceeded to combat the amendment,—which was negatived by 75 to 31—but which he well knew embodied the sentiments of a majority of both Houses.*

March 20. 1782. Formation of the second Rockingham administration.

The crisis soon arrived, Lord North declaring in the House of Commons on the day fixed for Lord Surrey's motion on "the state of the nation," that "his Majesty's ministers were no more."† Now was formed the second Rockingham administration, and the Whigs, till they quarrelled among themselves, were completely in the ascendant. There was considerable difficulty in disposing of the Great Seal. Lord Camden might no doubt have resumed it with the full concurrence of all sections of the party, but for twelve long years he had been unaccustomed to daily judicial drudgery; he was now verging upon seventy, and his attacks of the gout were becoming more frequent and more severe. He, therefore, preferred the office of President of the Council.

Lord Camden President of the Council.

It has always been unaccountable to me, that, on his declining the Great Seal, it was not given to Dunning, a most consummate lawyer, as well as a great debater and a zealous Whig.—If *he* unaccountably preferred the Duchy of Lancaster, the subordinate office conferred upon him, why was

* 22 Parl. Hist. 637—679. † Ib. 1214.

not the Great Seal given to Sir Fletcher Norton, who had become a favourite with the Rockingham Whigs, and was most eager for judicial elevation? The King, no doubt, was desirous that Thurlow should still be the "Keeper of his Conscience," so that he might have a "*friend*" in the Cabinet; but his wishes at that moment might easily have been controlled. I suspect that the Shelburne and Rockingham sections continued distinct even at the formation of the government, Dunning belonging to the former, and Norton to the latter, and that neither would agree to the appointment of the other's lawyer to the woolsack. This jealousy was openly manifested in a few days, for although it be the province of the prime minister to "take the King's pleasure" with respect to the creation of peers, Dunning was made Baron Ashburton, on the advice of Lord Shelburne, without the knowledge of Lord Rockingham; whereupon Lord Rockingham immediately insisted that Norton should be made Baron Grantley. Thus the Great Seal remained in the clutch of Thurlow, who hated all Whigs of all degrees with a most perfect hatred, and could not possibly be expected cordially to act in a government founded on principles which he had uniformly and vehemently opposed.

Thurlow remains Lord Chancellor.

## CHAPTER CXLVI.

CONTINUATION OF THE LIFE OF LORD CAMDEN TILL THE KING'S ILLNESS IN 1785.

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Lord Chancellor Thurlow opposes the government.

THE inconvenience of having Thurlow for Chancellor was soon experienced by the new government. Lord Rockingham and Lord Shelburne both agreed upon the propriety of carrying the "Contractors' Bill," which had been lately rejected,—and by way of redeeming their pledges, and maintaining their popularity, the reintroduction of it was one of their first measures. In the House of Lords it was fiercely attacked by the "Keeper of the King's conscience," who was thus answered by his colleague, Lord Camden, the new Lord President of the Council: "My Lords, I must express my astonishment at the laborious industry exerted by the noble and learned Lord on the woolsack. I can only suppose that he wishes to eke out a long debate, which (confining ourselves to solid and rational discussion) might, in my humble apprehension, have terminated in half an hour. The bill presents to my mind but one idea; it is simple and obvious. The noble and learned Lord said its principles should be examined, and, in that single observation of all he addressed to you, I agree with him. I believe there is no noble Lord present who doubts of the existence of 'undue influence' in one shape or another, however denominated, or whatever aspect it may lately have assumed. A very distinguished member of the other House*, now transferred into this on account of his great talents and inflexible political integrity, moved a resolution which was carried against the minister by a considerable majority,—'That the influence of the Crown has increased, is increasing, and ought to be diminished.' This is a full recognition on record of the existence of that evil which the principle of the bill was calcu-

Lord Camden's speech in favour of the "Contractors' Bill."

* Dunning, Lord Ashburton. See 21 Parl. Hist. 340., 6th April, 1780; majority, 233 to 215.

lated to remove. I will not say that an improper or corrupt influence has ever in any instance operated on any of your Lordships. My regard for the purity and dignity of this assembly forbids me to entertain such a suspicion. Nevertheless, I most heartily concur in the resolution of my noble and learned friend, which we must not allow to remain a dead letter, but make the foundation of practical improvement. I can hardly believe that the noble and learned Lord was serious in denying the existence of all public corruption. Thank God! as far as my means and poor capacity could be exerted, I have uniformly set my face against it. I can assure your Lordships that the hope of assisting to remove this cause of our national misfortunes constituted one of the prime inducements for my taking a part in the administration. My colleagues in office, who entered into the King's councils along with me, I am sure are animated by a firm and unanimous resolution to reform all abuses, to promote public economy, and to give their Sovereign and the nation such proofs of their sincerity, as must put it out of the power of any set of men to deprive them of their only means of solid support. The noble and learned Lord has tried to compel your Lordships to reject this bill, because you rejected a similar bill two years before. He seeks to deprive you of the exercise of your understanding, and to deprive the public of all advantage from the removal of prejudice and the advancement of knowledge. The bill is different in some of its provisions, and your Lordships are considering it under altered circumstances. This bill is part of a general plan of reform. To effectuate so great a work my friends have been invited by the public voice to take office. If this bill be thrown out, there is an end of the present administration; they would be no more. Having failed in our expectations, *we* being unable to carry the measures which while in opposition we recommended to those in power, the nation would regard us with indignation if we continued to draw our salaries while we are under the dictation of those whom we despise. Corrupt and incapable as the last ministers were, I am free to confess, my Lords, that in that case it would be much better

that they should be restored to power. They may possibly amend; but by remaining in office without the confidence of parliament and under the necessity of abandoning our objects, we should become daily more degraded and more contemptible, and we should not only ruin our own characters, but extinguish all confidence in public men, essentially injure the country, and take away all hope of better times."

Thurlow continued a most vexatious opposition to the bill in the committee, — denouncing it as "a jumble of contradictions;" but Lord Camden left the farther defence of it to the two new law Lords, Lord Ashburton and Lord Grantley, and they fleshed their maiden swords in various rencounters with the "blatant beast" who tried to tread them down. In some of the divisions the ministerial majority was not more than *two*. The bill was carried, but the administration was much shaken by this sample of the manner in which it was to be thwarted by the "King's friends."*

May 17. 1782. Bill to declare the legislative independence of Ireland.

Lord Camden's next speech in the House of Lords was in support of the bill to declare the legislative independence of Ireland, which had become necessary from the determined efforts of the Irish "Volunteers," in consequence of moderate and reasonable concessions being long denied to the sister kingdom. This measure was prudent under existing circumstances, with a civil war raging, and foreign enemies multiplying around us; but any prudent statesman might have foreseen that it could not permanently be the basis of the connection between the two islands. The parliament of Ireland and the parliament of Great Britain being equally supreme and independent, they must ere long differ on questions of vital importance, without an arbiter to reconcile them; and if, from any calamity, the power of the Crown should be in abeyance, every tie which bound them together would be severed. Lord Loughborough urged, "that when there was no check upon the Irish parliament but the mere VETO upon bills, and the government of each country was to move in perfect equality, his Majesty would not be King in Ireland in any different manner from that in which he might be sovereign of any other separate territory. The contiguity

* 22 Parl. Hist. 1356—1382.

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of position might preserve a more constant intercourse between the subjects of both, and the communion of rights unite them more closely to each other; but it was a possible case, that their interests might be supposed to be conflicting, and what then was to prevent their separation?"

Lord Camden, not being able to solve these difficulties, and not venturing to hint at the remedy of a legislative union, regretted "that any debate had arisen on the subject; saying, that unanimity would have given the best chance of efficiency to a measure that must pass." He spoke much of the virtues of the Irish, and the hardships they had suffered. "The right of binding Ireland by a British statute could not be exercised. Why then should the right be claimed? His noble and learned friend had not suggested any other practicable course than to agree to this bill. There was no difficulty in renouncing our right of judicature; so far it was a matter entirely for the consideration of the Irish; and as they now had a House of Lords consisting of men of great wisdom, knowledge, and integrity, assisted by their Judges, supposed to be well qualified to advise in matter of law, they were quite right in wishing to decide their own law suits at home. With regard to legislation there was more difficulty; but the present demand from the parliament of Ireland only echoed the voice of a brave, a generous, and an *armed* people; and he dreaded what might ensue if its justice or expediency were questioned."* The bill was very properly passed, with little more discussion; but, within seven years, upon the mental malady of George III.—according to the doctrine which prevailed, that it lay with the two Houses of Parliament to supply the deficiency—there might have been a choice of two different regents for the two islands; and, in point of fact, the two islands were about to appoint the same regent by very different means, and with very different powers.

Death of Lord Rockingham. Ap-

Soon afterwards came the disruption of the Whig government, by the death of the Marquis of Rockingham, and the appointment of Lord Shelburne to succeed him. Lord

* 23 Parl. Hist. 44. See Lord Camden's Letter on this subject, 13th Aug. 1784, post.

Camden was of opinion, (and I must say with due deference to such names as Fox, Burke, and Lord John Cavendish,) was rightly of opinion that there was no sufficient ground for ministers to throw up their employments in a crisis of such danger to the state. The new premier was not generally popular; but he was of liberal principles, he was of good abilities, he was a magnificent patron of learning and genius; and the Rockinghams, though personally disliking him, had been sitting with him in the same cabinet. A denial of the right of the King, under these circumstances, to prefer him, was something very much like an entire extinction of the royal authority by a political junto. Lord Camden, therefore, retained his office of President of the Council till he was ejected by the formation of the "Coalition Ministry." He was much grieved to be separated from political friends to whom he was sincerely attached,—and chagrined to be brought into closer contact with Lord Thurlow, whose consequence in the cabinet was much enhanced; but he earnestly superintended the negotiations for peace, and laboured to bring them to a favourable issue.*

pointment of Lord Shelburne as prime minister.

Lord Camden retains office. Feb. 1783.

Soon after the formation of Lord Shelburne's government, it was in great danger from internal dissensions. The Duke of Grafton had been induced by Lord Camden to join it, and to accept the Privy Seal. Probably forming an exaggerated notion of his own importance, from his superior rank and the political station he had once filled, he thought himself slighted, and thus disclosed his griefs to his old friend:

Dissensions in Lord Shelburne's Cabinet.

"I begin to feel now what I have thought often before — that a Lord Privy Seal, who is not known and understood to be *confidentially trusted* and *consulted* by the principal minister, cuts but a silly figure at a cabinet. If he is wholly silent, and tacitly comes in to all that is brought there, he

July 28. 1782.

* While the negotiations for peace were going on, it would appear that the President of the Council was confidentially consulted respecting the different articles. There was now, as there had been at antecedent periods, a disposition to restore Gibraltar to Spain; but this he strenuously resisted. "With Lord Camden," says the Duke of Grafton, "I had much conversation; he appeared to me to lean now considerably to the opinion that Gibraltar is of more consequence to this kingdom, and that the views of its ministers ought in future to look to the possession of it as an object of more value than at first imagined; as likewise that the cession of it, even on good terms, would be grating to the feelings of the nation."—*Journal*, 1782.

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becomes insignificant — as he is deemed officious and troublesome if his opinions urge him to take a more active part than his office appears to call from him. I have too much warmth and zeal in my disposition not to be drawn into the latter; and my spirit revolting at the former, I find that I must make my retreat if my suspicions should be realised, and that the Earl of Shelburne circumscribed his confidence towards me within the bounds of great *civility* and *appearance of communication*." After at great length stating the means with which he had connected himself with Lord Shelburne, and his supposed ill usage, he says, "I had once resolved from a dislike to suspense, to have told you all I thought and felt on the subject; but it is knowing too little of mankind to think that opinions or real confidence can be forced. You may as well force love, and I was and think I shall remain silent. However, it has eased my mind in some degree to have opened my design to your Lordship. We have moved so much on the same principle, that I cannot help wishing to hear what you say about me. My case is particular: recollect the situation I have been in, and that, thank God! I have nothing I want, and nothing I fear from any minister; and, above all, that my domestic peace and happiness ought to be most the object of my wishes and pursuits, and then say, my dear Lord, if I am not right."

Aug. 1. 1782.

Thus Lord Camden replied: "I have seen and observed with infinite concern that Lord S. has by no means treated your Grace with that confidence I expected, after you had so earnestly laboured to support his new administration, not only by taking so important a post in it yourself, but by keeping others steady who were wavering at that critical moment. I am myself an instance and a proof of your Grace's endeavours, for your persuasion had more force with me than any other motive to remain in my present office. I was therefore disappointed, seeing the Earl of S. so negligent in his attention to your Grace; as if, when his administration was settled, he had no farther occasion for those to whom he was indebted for the credit of his situation. Your Grace's real importance demanded the openest communication, and your

friendship the most confidential return, and therefore I cannot be wholly without suspicion that his Lordship means to take a line, and pursue a system, not likely to meet with your Grace's approbation; and if he does, I am not surprised at his reserve: for where there is a fundamental difference of opinion there can be no confidence. However, I will not suffer my suspicions to operate with me till I have demonstration by facts. Lord S. continues to make professions of adhering to those principles we all avowed upon the first change, and he has pledged himself publicly to support them — in which respect it is but reasonable to wait some time for the performance of his promises. At the same time I do readily admit your Grace's dignity, rank, and former situation require something more, and you ought not, as Duke of Grafton, to submit to so under a part with the Earl of Shelburne as to be Privy Seal without confidence. But considering the perilous condition of the public at this conjuncture, I should be much concerned if your Grace was to take a hasty resolution of retiring just now, because your retreat would certainly be followed by other resignations, and would totally *unwhig* the administration, if I may use the expression *; and this second breach following so quick upon the first, would throw the nation into a ferment. It will not be possible when the parliament meets for Lord S. to conceal or disguise his real sentiments; and if it should then appear that the government in his hands is to be rebuilt upon the old bottom of influence, your Grace will soon have an opportunity of making your retreat on better grounds than private disgust.

"I am not more fortunate than your Grace in sharing his Lordship's confidence. Yet, though 'I am bound only for three months,' and have the fair excuse of age to plead, I would not willingly risk the chance of any disturbance at this time by an abrupt resignation, but would rather wish if such a measure should hereafter become necessary to take it

* The only other occasion I recollect of this word being used was when Mr. Fox, on the King's illness, having contended that the heir apparent was entitled as of right to be Regent, Mr. Pitt said, "For this doctrine I will '*unwhig*' him for the rest of his days."

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in conjunction with others upon public grounds. I am, besides, but too apprehensive that more than one of us will be ripe for it, perhaps before the Session. Lord K., I know from certainty, will quit after the campaign. The D. of R.'s discontent is marked in his countenance; and if the Whigs should desert, neither G. C., nor Mr. Pitt, nor even Mr. T., would have the courage to remain behind. I do not, my dear Lord, conceive it possible that a cabinet composed as ours is can be of long duration; especially if Lord S. confines his confidence to one or two of those possibly obnoxious to the others. I have had a long friendship for the Earl, and cannot easily be brought over to act a hostile part against him, and for that, as well as other reasons, cannot help expressing my own wishes that your Grace may wait a while; at least till you have received most evident conviction of his indifference to your opinions and assistance." *

Harmony restored.

The Duke of Grafton says: "Lord Camden's advice prevailed, and I readily acquiesced in his opinion on this occasion, as I was always inclined to do on most others." * Thus harmony was restored, and Lord Shelburne's government went on with some vigour till the preliminaries of peace were signed.

Coalition between Mr. Fox and Lord North.

Mr. Fox and Lord North, by their ill-starred union, having then obtained in the House of Commons a large majority, and passed a vote of censure on the terms agreed to, parties were thrown into a state of unexampled confusion. Lord Shelburne was still unwilling to retire, and hoping to create a difference between the chiefs associated for his overthrow, meditated to form a coalition himself either with the one or the other of them. Meanwhile his colleagues strongly pressed him to resign. The Duke of Grafton demanded an audience of the King, and acting singly, though with the approbation of Lord Camden, surrendered the Privy Seal into the King's hands, on account of his disagreement with the head of the Cabinet. His Grace, after relating his conversation with George III., gives a very lively sketch of the state of the ministry at this time: "Previously to my going to

Feb. 19. 1783.

* Journal, Aug. 1782.

St. James's, Lord Camden called on me, and imparted all that he found himself at liberty to say of a very serious conversation he had that morning with the Earl of Shelburne, who had sent for Lord Camden, as he now and then did when he found himself in difficulties, and on this occasion to consult Lord Camden on the part it became the Earl to take. The substance of Lord Camden's advice was decisive, and nearly this: that Lord Shelburne should retire, as unfortunately it plainly appeared that the personal dislike was too strong for him to attempt to stem with any hope of credit to himself, advantage to the King, or benefit to the country; that he had it in his power to retire now with credit and the approbation of the world, for whatever the acts and powers of united parties had expressed by votes in parliament, &c., still the nation felt themselves obliged to him for having put an end to such a war by a peace which exceeded the expectations of all moderate, fair-judging men. Lord Camden further said to his Lordship, that he might add lustre to his retreat by prevailing on the King to call on the body of the Whigs to form an administration as comprehensive as could be. Lord Camden went further by saying, that if Lord Shelburne could not be prevailed on to take either of the steps which would give him most credit with the world, and that he was still from engagement or inclination instigated to stand as minister, he had nothing better to advise than that his Lordship should, with manly courage, avow a close junction with Lord North's party, if he could so manage it. This, indeed, might enable his Lordship to carry an administration which a middle way and a partial junction never would effect. Lord Camden added, that he thought the last scheme to be that which ought, if possible, to be avoided. I observed to Lord Camden that I was clear, notwithstanding the advice, that Lord Shelburne preferred it to all the others, and that such would be his decision. The object of sending for Lord Camden, I believe, was with the hopes to draw him into his opinion if he was able, and by no means to take his advice unless it could be made to coincide with the part he was decided to take, though he

State of parties immediately before the formation of the "Coalition ministry."

Lord Shelbourne meditates a coalition with Lord North.

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did not perceive that it was now too late for his plan to succeed. Lord Camden freely acquainted Lord Shelburne that he could not remain at any rate, that the whole was new modelled, and that he must claim his right of retiring at three months, and which had been stipulated at Lord Rockingham's death. Lord Camden urged to him strongly the propriety of his coming to his decision before two days were expired: the other inclined to see the event of as many months.— On the 21st, Lord Camden called on me in the morning, and after much lamentation on the alarming state of public matters, he told me that he was fully determined to quit his office, but that he should take every precaution to make it particularly clear that his resignation should not be interwoven with Lord Shelburne's retreat: he was anxious that his Lordship's conduct on the present occasion should neither guide his in reality, nor in appearance. Lord Camden's decision pleased me much, as I told him, for his character entitled him to take his own part whenever he thought the ground good and honourable, without being actuated by the decision of any person whatever."

Short triumph of Mr. Fox and Lord North's "Coalition."

Lord Camden accordingly resigned in a few days after, and Mr. Fox and Lord North remaining steady to their engagements, notwithstanding all the attempts which were made to disunite them, Lord Shelburne was obliged to retire,— the cabinet was stormed,—and, for a brief space, the "Coalition Ministry" was triumphant.

Lord Camden in opposition.

Lord Camden now went into violent opposition, and listed himself under the banner of the younger Pitt, delighted to recognise in him the brilliant talents and the lofty aspirations of the friend of his youth, his political patron, and the associate of his old age—with whom he had long fought the battles of the constitution.*

Dec. 9. 1783.

When Mr. Fox's India Bill, after its most stormy passage through the Commons, at last reached the House of Lords, it was violently assailed by the Ex-chancellor, who de-

* It might truly have been said of Lord Chatham and Lord Camden, that in many "a glorious and well foughten field they kept together in their chivalry."

nounced its principle as being an arbitrary infringement of the property and the rights of the greatest company in the world. "This bill," he said, "was tantamount to a commission of bankruptcy, or a commission of lunacy against them: it pronounced them to be unable to proceed in their trade, either from want of property, or from want of mental capacity. The only argument for this violent measure was that of *necessity*—which had been used by the worst kings and the worst ministers for the most atrocious acts recorded in history. The only necessity for the bill was that ministers might preserve their power, and increase their patronage. The author of the bill was himself to appoint to every office in India. The influence of the Crown had been, to a certain degree, curtailed by late reforms, but now it would be infinitely greater than when one section of the present government had beaten the other on the resolution that 'the influence of the Crown had increased, was increasing, and ought to be diminished.' He lamented the death of the Marquis of Rockingham, who, had he survived, would have adhered steadily to the doctrines of Whiggism, and he lamented still more deeply that some of those who called themselves his friends, should now favour a measure so inconsistent with the principles which it had been the labour of that great man's life to establish."*

Lord Camden's speech against Fox's India Bill.

The bill being rejected in the House of Lords by a majority of 95 to 76, the "Coalition Ministry" being dismissed, and William Pitt, at the age of twenty-four, being made prime minister, it was expected that Lord Camden would immediately have resumed his office of President of the Council,—and this would have happened had he not waived his claim, that he might facilitate the new arrangements. Earl Gower, afterwards Marquis of Stafford, although he had never had the slightest intercourse with Mr. Pitt, entertained a great admiration of his talents and his character, and sent him a message by a confidential friend, that "desiring to enjoy retirement for the rest of his life, he had no wish for any office, but that in the present

Coalition turned out, and Mr. Pitt prime minister.

Dec. 19. 1783.

Lord Camden for some time supports him without office.

* 24 Parl. Hist. 190.

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situation of the King, and distressed state of the country, he would cheerfully take any office in which it might be thought he could be useful." His name and experience were likely to be of great benefit to Mr. Pitt at this moment,—particularly as Lord Temple, after holding the Seal of Secretary of State for a few days, had thrown it up. The presidency of the council, with high rank, and little work, was thought the post which would be most suitable and agreeable to Lord Gower. He was accordingly appointed to it, and held it during the stormy session which ensued, when the young minister, supported by the King and the nation, fought his gallant fight against the combined bands of Tories and Whigs who had vowed his destruction.

Dec. 1783.

Although the rejection of the India Bill by the Lords had put an end to the "Coalition Ministry," there was perfect tranquillity in their House for the rest of the session, while the storm was raging in the House of Commons—insomuch that Lord Camden, although prepared to support the new administration, had no occasion to come forward once in their defence. When the session was closed by a prorogation, and Parliament being dissolved, the people pronounced decidedly against the Coalition, Mr. Pitt's difficulties were over, and he was in the proudest situation ever occupied by a minister under an English sovereign.

March, 1784.

May, 1784.

Lord Camden waives his claim to the office of Lord President in favour of Lord Gower.

Lord Gower's assistance might now have been dispensed with, but his taste of office had pleased him, and he felt no inclination to withdraw again into private life. Lord Camden would not put the Government to any inconvenience by an impatient desire to resume his office, and during the recess he paid a long visit to Ireland, with the double object of of seeing his favourite daughter, and of acquiring information to enable him to assist in carrying the important measures which the minister was about to bring forward for the establishment of a free trade between the two countries.

While there he wrote the Duke of Grafton the following letter on Parliamentary Reform, giving a most interesting view of the state of public feeling among the Irish, after they had obtained "independence:"—

Aug. 13. 1784.

"There is one question which seems to have taken pos-

session of the whole kingdom, and that is the reform of parliament—about which they seem very much in earnest. Those who wish so much for that reformation at home, cannot with much consistence refuse it to Ireland, and yet their corrupt parliament must be considered the only means we have left to preserve the union between the two countries. But that argument will not bear the light, and no means ought in my opinion to be adopted too scandalous to be avowed. I foresaw when we were compelled to grant independence to Ireland the mischief of the concession, and that sooner or later a civil war would be the consequence—a consequence ruinous to England but fatal to Ireland, for she must at all events be enslaved either to England or France. This people are intoxicated with their good fortune, and wish to quarrel with England to prove their independence. Big with their own importance, and proud of their 'Volunteers,' they are a match, as they imagine, for the whole world. But as Galba describes the Romans,—'Nec totam servitutem pati possunt, nec totam libertatem.' This misfortune would never have happened if our government had not been tyrannical and oppressive."

Letter from Lord Camden on the state of Ireland.

On Lord Camden's return to England, a negotiation was opened for his restoration to the Cabinet. He consented on the condition that an effort should be made that his old chief, the Duke of Grafton, might join the administration. Mr. Pitt was pleased with the proposal, for he still professed himself to be a stout Whig, and he wished to have some counterbalance in his government to the Sidneys, the Gowers, and the Thurlows. The plan was to transfer Lord Gower to the Privy Seal, and to make Lord Carmarthen resign his office of Secretary of State. Lord Camden thus writes to the Duke of Grafton, giving him an account of the negotiation:—"Mr. P. told me he had mentioned to Lord G. his wish that he would consent to exchange his office for the Privy Seal, and believed he should find no difficulty in obtaining that compliance; that he had not yet found an opportunity of sounding L[d] C., as it was not easy for him to make such a proposal as might tempt him to retire from his present situation, but that it was upon his mind, and that

Negotiations for Lord Camden's return to office, and the Duke of Grafton to join the administration.

Sept. 29. 1784.

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your Grace as well as myself might be assured the very moment any vacancy in the Cabinet could be procured that your Grace would condescend to accept, it should be done. I must do Mr. Pitt the justice to say he expressed as earnest a desire as myself to a close and intimate political conjunction with your Grace, and saw clearly the great utility of the Cabinet having so clear a Whig complexion as our accession would give it."

Oct. 13. 1784.

In a subsequent letter, Lord Camden, after speaking of the negotiation for the resignation of Lord Carmarthen, says, "If that difficulty is removed, I should hardly allow your Grace's plea of disability, or fear to undertake so arduous an employment, to have the weight of an insurmountable objection. If that was sufficient in your Grace, who are now in the very vigour of your age and the ripeness of your understanding, to warrant a refusal, what can be said to me, who am in the last stage of life, when both mind and body are in a state of decline, and are every day tending towards total incapacity? In reality, such is my backwardness to embark in business, that nothing but the comfort of your Grace's support and co-operation could have prevailed upon me to alter my determined purpose (for so it was till I was over-ruled) for final retirement. And I am afraid, if I know my own feelings, I should perhaps be pleased at my heart, and almost thank your Grace, if you should, by withdrawing yourself, give me an honest excuse for breaking off.—I have read the Dean of St. Asaph's trial, and confess I have seen nothing libellous in the paper, and am, besides, more displeased with Judge Buller's behaviour than I was formerly with Lord Mansfield's. Something ought to be done to settle this dispute: otherwise the control of the press will be taken out of the hands of the juries in England, and surrendered up to the Judges."

Lord Camden agrees to resume office without the Duke of Grafton. Oct. 25. 1784.

It was found impossible to prevail on Lord Carmarthen to retire. This disappointment Lord Camden communicated in a letter to the Duke of Grafton, in which, after stating that no vacancy could then be made for him in the Cabinet, he thus proceeds: "And now, my dear Lord, what part does it become me to take? I don't ask your advice, because I have taken my part already, and have agreed to come in;

but I will state my own difficulties, and the true reason that prevailed upon me, at last, to accept. I am more averse than ever to plunge again into business in the last stage of my life. I do not like the Cabinet, as composed: the times are full of difficulty, and the C. not much inclined to persons of our description. Add to this, my own aversion to business, now almost constitutional from a habit of indolence; and, above all, the want of your Grace's support, the only circumstance that made me enter into this engagement after I had, over and over again, given a positive denial. These, you must allow, were weighty considerations; and yet, though I was fairly released by Mr. Pitt's failing to make that opening he had engaged to make, and your Grace's postponing your acceptance till the end of the session, yet, when I considered that Mr. Pitt would be cruelly disappointed, and perhaps, in some sort, disgraced upon my refusal, after he had engaged Lord Gower to exchange his office, and that I was pressed in the strongest manner by all my friends, and more particularly by your Grace, who was pleased to think my coming forward would be useful to the public, and help to establish the administration, I took the resolution to vanquish my reluctance, and to sacrifice my own ease to the wishes of other men."

Nov. 29. 1784. Lord Camden's views in returning to office.

It was still some weeks before the arrangement was completed, and then Lord Camden, after informing the Duke of Grafton that Lord Gower had at last actually exchanged the Presidency of the Council for the Privy Seal, adds:—"I am now called upon to fill up the vacancy. I go to it with a heavy heart, being separated from your Grace with whom I had intended to have closed my political life,—*iterum mersus servilibus undis*, at a time of life when I ought to have retired to a monastery; but as the die is cast, I will go to the drudgery without any more complaining, and do my best; as I have lost all ambition, and am happily not infected with avarice, and as my children are all reasonably provided for according to their rank and station, I can have no temptation to do wrong; and therefore though, in my present situation when I do not ask the employment but am solicited to accept it, I might, after the fashion of the world, put some price upon

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myself, I am determined neither to ask nor to accept any favour or emolument whatever for this sacrifice of my own ease.

Law of Libel.

"I have employed myself of late in examining with some attention the proceedings of the Court of King's Bench in the libel cause of the Dean of St. Asaph, thinking it probable it might have been brought by writ of error into our House; but they have taken care to prevent that review by arresting the judgment, and so the great question between the Judge and the jury in this important business is to go no further, though it is now strengthened by a solemn decision of the Court, which never happened before. This determination in my poor opinion strikes directly at the liberty of the press, and yet is likely to pass *sub silentio*. The newspapers are modest upon the subject, because Mr. Erskine is not to be commended by one party, or Lord Mansfield run down by the other. Thus your Grace sees that public spirit is smothered by party politics."

Lord Camden again President of the Council.

Lord Camden, notwithstanding some affectation of reluctance, very cheerfully resumed his office of President of the Council, and continued to fill it during a period of nine years, always co-operating most harmoniously and zealously with the "Heaven-born Minister," who, although he began to be nicknamed "Billy Pitt the Tory," and although his zeal for reform did cool considerably, cannot be accused of bringing forward any measure which a Whig might not have supported, till the aged Lord President had disappeared from the scene.

June 18. 1785. Opposition to Mr. Pitt's resolutions for allowing free trade with Ireland.

The session of 1785 was chiefly occupied with the measures to establish free trade with Ireland—which were so creditable to their author—the first English minister, who was a pupil of Adam Smith. However, they were furiously opposed by the English manufacturers, with Mr. Peel, the worthy father of our Sir Robert, at their head,—foretelling entire ruin to England if the laws against the importation of Irish manufactures were removed,—as, from the low price of labour, and the lightness of taxation in Ireland, cotton might be spun, muslin woven, and every sort of fabric finished there at an infinitely cheaper rate than in England; —so that if the pro-

posed abolition were agreed to, English industry would be paralysed, grass would grow in the streets of Manchester, and we should become a nation of paupers. Mr. Peel threatened that he would remove, with his capital and his family, to the sister Isle, which was thus to be so highly favoured, at the expence of the mother country. In the House of Lords, these views were zealously supported by Lord Stormont and other Peers. But the resolutions were defended, in a masterly speech, by Lord Camden. He said "that to his knowledge, nothing but the strongest necessity could have induced the minister to undertake a measure so weighty, which, however conducted, was sure to be productive of murmurs and discontent among many, who, upon all other subjects, were disposed to be his warmest supporters." He then drew an affecting picture of the present wretchedness of Ireland — he described her great natural advantages — he explained her wrongs — he sought to create alarm by her loud demands of redress. "The tranquillity of the empire," said he, "is at stake. The Irish will next lay their grievances at the foot of the throne; and importune the Sovereign of both countries to take part with the one against the interest, or rather the prejudices, of the other. Here is the foundation of a civil war. Does it not become the providence of the government to guard against such an emergency? The discontents of the Irish are in proportion to their sufferings."—Having detailed the proposed regulations for establishing free trade between the two islands, he considered the objections to them. "With respect to the argument of cheapness of labour, which has given such terrors to the manufacturers," he observed, "I confess I see it without alarm. This cheapness of labour must only continue during the rudeness of art; and, in the meanwhile, the rich and manufacturing country must enjoy the benefits of superior skill. There the finished article will still be cheaper. As to Mr. Peel, and the other intelligent witnesses examined at your bar, who threaten to emigrate to Connaught, I feel no uneasiness. If they really should form spinning establishments in that wild region, they may do much to civilise and improve it; and in Lancashire, their place may be supplied by others equally

Lord Camden's speech in support of them.

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enterprising and respectable. They are not more reasonable than our manufacturers of silk and iron, who call upon us to lay such duties upon these articles when exported from Ireland, that the Irish may be excluded from competition in supplying them to the American market. These requests may all be traced to their true source — the itch of monopoly. Let us not have protecting duties on one side of the water, with retaliating prohibitions on the other, which will foster growing enmity between us, to the delight and aggrandizement of our common enemies." Still there were thirty votes in the negative; and a protest was signed, I am sorry to say, by Lord Derby, Lord Fitzwilliam, and other Whig Peers.

March 19. 1785. Lord Camden supports Mr. Pitt on the question of Parliamentary Reform.

When Mr. Pitt again brought forward his motion for a reform in Parliament, Lord Camden gave him all the assistance and encouragement in his power; and the following letter, urging the Duke of Grafton to compel one of his members, who was rather doubtful, to vote for the measure, affords, I think, strong evidence of the Premier's sincerity:

"My dear Lord,

"I find myself under a necessity of troubling your Grace, at Mr. Pitt's request, upon a question which I have always thought of the highest importance to the constitution, I mean the reform of Parliament. And, if your Grace thinks upon the subject as I do, you will lend your aid, by imparting your wishes to such of your friends as are likely to pay attention to your opinion. Mr. Pitt is not assured how Mr. Hopkins stands inclined to this measure, but is very anxious to obtain his concurrence, unless he is really and conscientiously averse to it. At least he wishes, and would think that he may not unreasonably hope, that he would give his vote for bringing in the Bill. When I have said this, I have said all that becomes me to say on this occasion, adding only that Mr. Pitt's character, as well as his administration, is in some danger of being shaken, if his motion is defeated by a considerable majority. I do confess myself to be warmly interested in the event, upon every consideration, and that, perhaps, is the best apology I can make your Grace for giving you this trouble, leaving it entirely to your own

wisdom to judge how far it would be fitting or agreeable to your Grace to communicate your wishes to Mr. Hopkins. CHAP. CXLVI.

"I am," &c.

I will here introduce two letters written at this time, showing, in an amusing manner, how an application used to be made, and evaded, to promote a Bishop. The individual to be translated was Hinchcliffe, who, since the year 1769, had held the poor see of Peterborough, where he had been placed by the Duke of Grafton, when Premier. The first letter is to his Grace from Lord Camden:

Feb. 5. 1786. Application to promote a Bishop.

"I was forced to wait some days before I could meet with an opportunity of conferring with Mr. Pitt, and when he had, after a full conversation, explained himself, though I think I perfectly understood the substance, I would not venture to put my own sense upon his words. I begged that he would at his first leisure put it down in writing—which I have this day received. But I should not care to send it by the common post, unless I should have your Grace's commands for that purpose. To say the truth, I do wonder a little, upon reflection, that we have hazarded our correspondence as we have done by the post. I will only add, that the answer, as far as I can judge, will give your Grace satisfaction. Courtly expressions and complimental civility are of course, and go for nothing; but I am much mistaken indeed if Mr. P. is not as sincere in his intentions as he is cordial in his expressions."

The following is the Prime Minister's courteous and cautious reply.

"Downing Street, Feb. 4. 1786.

"My dear Lord,

A Prime Minister's promise.

"In answer to the communication your Lordship was so good to make to me from the Duke of Grafton, I should be greatly obliged to you if you will assure him that from the desire I entertain of showing every possible attention to his Grace's wishes, he may rely on my being happy to find an opportunity of recommending the Bishop of Peterborough to his Majesty for advancement on the Bench. His Grace not

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having particularly mentioned any specific object, and it being difficult to foresee the arrangements which may be taken till a vacancy happens in some of the most considerable sees, I can do no more than express my general inclination to meet his Grace's wishes as far as circumstances will allow. Indeed I think there is every reason to suppose that in the course of no very long time openings must occur which may admit of some desirable promotion being proposed to the Bishop, and it will give me great pleasure whenever it can be done to his Grace's satisfaction.

"I am ever,
"My dear Lord,
"With great attachment and regard,
"Most sincerely yours,
"W. PITT.

"The R[t] Hon[ble] Lord Camden."

As might have been foreseen, Hinchcliffe lived and died Bishop of Peterborough.

Lord Camden made an Earl.

On the 13th of May 1786, Lord Camden's services to the Minister were recognised by his being raised in the peerage; he was created Viscount Bayham, of Bayham Abbey, in the county of Kent, and Earl Camden.

State of affairs till the King's illness.

His chief antagonist in the House of Lords, in his later years, was Lord Loughborough, who was in hot opposition from the dissolution of the "Coalition Ministry," till he went over with the "Alarmists" at the commencement of the French revolution. Against him he ably defended the East India Judicature Bill *, the Excise Bill †, and other measures of

* 26 Parl. Hist. 131.

† Being then in his 72d year, he took occasion to declare that his youthful sentiments in favour of the liberty of the subject remained unaltered. "I allow that the extension of the excise laws is dangerous, and fraught with multifarious mischiefs. It unhinges the constitutional rights of juries, and violates the popular maxim that 'every man's house is his castle.' I have long imbibed these principles; I have been early tutored in the school of our constitution, as handed down by our ancestors, and I shall not easily get rid of early predilections. They still hang hovering about my heart. These are the new sprouts of an old stalk. Trial by jury is indeed the foundation of our free constitution; take that away, and the whole fabric will soon moulder into dust. These are the sentiments of my youth,—inculcated by precept, improved by experience, and

Government; but Mr. Pitt's ascendency was now so triumphant, that the Lords had little to do but to amuse themselves with Mr. Hastings's trial, and they had no other debate of permanent interest till the nation was thrown into consternation and confusion in the year 1788 by the King's illness.

warranted by example. Yet, strange as it may appear to your Lordships, the necessity of the case obliges me to give my assent to the present bill," &c.—26 Parl. Hist. 177.

# CHAPTER CXLVII.

## CONTINUATION OF THE LIFE OF LORD CAMDEN TILL THE BREAKING OUT OF THE FRENCH REVOLUTION.

CHAP. CXLVII.

A.D. 1788.

Lord Camden conducts the proceedings in the House of Lords on the King's illness.

WHEN the Sovereign, supposed by the law to be upon the throne, with the sceptre in his hand, ruling his people, was actually in a straight waistcoat, under the control of keepers, —the royal authority being in complete abeyance, steps were necessarily to be taken for the purpose of reviving it. Mr. Pitt, aware of Lord Thurlow's intrigue with Carlton House to retain the Great Seal, in case of a Regency, placed all his confidence in Lord Camden for carrying through his plan,—whereby the two Houses were to assert their right to provide as they should think fit for the exercise of the prerogatives of the Crown, and a Bill was to be passed, according to the usual forms of the constitution, appointing the Prince of Wales Regent, under severe restrictions, to disable him, as much as possible, from conferring favours on the political party to which his Royal Highness was attached.

On the 20th of November, the day on which parliament met after the prorogation, the Chancellor having announced the royal indisposition, Lord Camden moved an adjournment for a fortnight, and that a letter of summons should be written to every Peer requiring his attendance. In the meanwhile he presided at a meeting of Privy Council, attended by all Privy Councillors of whatever party,—at which the King's physicians, being examined, all agreed that he was wholly incapable of meeting parliament or attending to public business, but differed as to the probability of his recovery.

Dec. 4.

On the appointed day, Lord Camden laid the examinations before the House. When they had been read, he observed "that the melancholy state of his Majesty's health was sufficiently evinced; and as the physicians could not give their Lordships any assurance as to the time when he would recover, it was incumbent on the two Houses of

Parliament to proceed to make some provision to supply the deficiency in the legislature, and to restore energy to the executive government. Yet, previously to such a necessary and important step, he should take the liberty of moving for a committee to search for precedents in similar cases. According to rumour, it had been laid down in another place 'that the course of proceeding under such circumstances was prescribed by the common law and the spirit of the constitution, viz. that the heir apparent, being of age, was entitled to assume the legal authority as a matter of right, and to exercise it as long as his Majesty's disability shall continue, as upon a demise of the Crown.'—If this be the common law, it is an entire secret to me. I never read or heard of such a doctrine. Those that broached it should have been ready to cite their authorities. They may raise expectations not easily laid, and may involve the country in confusion. The assertion of this doctrine, however, is a strong argument in favour of my motion, for we shall thus have an ample opportunity of considering the precedents on which it rests."

He moves for a committee to search for precedents.

Lord Loughborough mentioned the extraordinary assertion hazarded elsewhere, "that the Prince of Wales, the heir apparent to the throne, has no more right to take upon himself the government during the continuance of the unhappy malady which incapacitates his Majesty than any other individual subject,"—contending that an elective regency was inconsistent with an hereditary monarchy. Thurlow at this moment thought it convenient to deny the Prince's right,—and after a short reply from Lord Camden his motion was carried.*

On the 23d of December, after the report of the committee, Lord Camden moved the resolution "that it is the right and duty of the Lords spiritual and temporal, and Commons of Great Britain now assembled, and lawfully, fully, and freely representing all the estates of the people of this nation, to provide the means of supplying the defect of the personal exercise of the royal authority, arising from his Majesty's indisposition, in such manner as the exigency

Resolution as to right of the two Houses of parliament to provide for the exercise of the royal authority.

* 27 Parl. Hist. 654—675.

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of the case may appear to them to require." After a long debate, it was carried by a majority of 99 to 66, and was followed by another resolution moved by Lord Camden, that "it is necessary for the two Houses to determine in what manner the royal assent shall be given to a bill for settling the regency." *

Jan. 22. 1789. Prince of Wales to be appointed Regent under restrictions.

On a subsequent day, he moved "that for the purpose of providing for the exercise of the King's royal authority during the continuance of his Majesty's illness, in such manner, and to such extent as the circumstances of the nation may appear to require, it is expedient that his Royal Highness the Prince of Wales, being resident within the realm, be empowered to exercise and administer the royal authority in the name and on the behalf of his Majesty, subject to such limitations and exceptions as shall be provided." He thus began: — "It is with deep concern that I find a task of such unprecedented weight has devolved upon me. I stand up most reluctantly to address your Lordships on this occasion, feeling every day stronger and stronger reasons to wish to retire from the hurry of business, to repose and contemplation. I trust, my Lords, that this is the last act of my political life. I must not shrink from my duty, for the safety of the monarchy and the public tranquillity are at stake." Having recapitulated the proceedings that had been taken since his Majesty's illness began, and the resolutions of the two Houses respecting their right to appoint a regent with such powers as they might confer upon him, he detailed the plan of regency which the ministers proposed, explaining and defending the regulations for the custody of the King's person, for preserving the household appointments as they then stood, and for preventing the Regent from creating Peers. He allowed that the heir apparent was the fittest person for the two Houses, in their discretion, to select for Regent; but insisted on the propriety of putting him under restrictions while there was any probability of his Majesty being restored to the throne. The objection, that inconvenience might

* 27 Parl. Hist 853.

arise from so materially curtailing the power and patronage of the Crown, he answered by observing that "if the Regent's administration was conducted on good principles, it would meet with general support, and if its measures were unconstitutional, there should be no facility given to carrying them through." Notwithstanding powerful arguments to show that our constitution might suffer serious detriment from the election of a Regent by the two Houses, with such powers as they were pleased to bestow upon him, and from tampering with the prerogatives of the Crown, which were not supposed to be greater than were necessary to carry on the government for the public good, Lord Camden carried his motion by a majority of 94 to 68; but a strong protest was signed by the Duke of York, and almost all the Peers who voted in the minority.*



Feb. 2. 1789. "Phantom of the Great Seal."

Lord Camden's next speech was respecting the *mode* in which the Regent should be "elected or appointed." He declared that, "amidst a choice of evils, the proposal of his Majesty's ministers, which he was to explain, appeared to him to be the least objectionable, and most fit to be adopted, because the most reconcileable to the principles [*quære*, forms?] of the constitution. He was open to conviction, and was ready to adopt any other which their Lordships might deem preferable; but something must immediately be done to resuscitate the legislature, and to rescue the people from the condition, of which they were beginning loudly to complain,— of being without a government. He was aware that the plan he was to recommend had already been made the subject of much ridicule. 'A phantom!' 'a fiction!' 'a forgery!' and various other contemptuous appellations, had been bestowed upon it. Let those who objected to it in this House show how, otherwise, the constitution could again be put into a state of vigour and activity. The delay

* 27 Parl. Hist. 1075—1094. In the course of this debate Lord Camden got into a scrape, in obviating the objection to the suspension of the power of making Peers, by saying, that "on any urgent call for a peerage it might be conferred by act of parliament"— a proceeding which appeared to their Lordships so unconstitutional and republican, that he was obliged to explain and retract.

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that had already taken place had revolted the public mind, and the nation loudly called on Parliament to interpose its authority. But, circumstanced as it at present was, Parliament could not take a single step;—without the King it was a mere headless, inanimate trunk; —the royal assent was essential to legislation. The King upon his throne in that House, or by Commissioners appointed under the Great Seal, must sanction their proceedings,—which otherwise had no legal operation. The first step to be taken was to open the Parliament by the King's authority. The law declared that, in person or by representative, the King must be there, to enable them to proceed as a legislative body. That his Majesty, from illness, could not attend personally, was a fact too well known to be disputed. When the King could not attend personally, the legal and constitutional process was, to issue letters patent under the Great Seal. In the present dilemma, therefore, he recommended that the two Houses should direct letters patent to be issued, under the Great Seal, authorising Commissioners to open Parliament in the name of his Majesty. He must use the liberty to say, that those who treated this proposal with ridicule were ignorant of the laws of their country. A '*fiction*' it might be termed, but it was a fiction admirably calculated to preserve the constitution, and, by adopting its forms, to secure its substance. Such a commission being indispensable, by whom was it to be ordered? The King's sign-manual, the usual warrant for it, could not be obtained. Would it be said that the Prince of Wales could command the Lord Chancellor to put the Great Seal to the commission? Both Houses had recently resolved that the heir apparent has no such right. Would the Lord Chancellor himself venture to do it, of his own accord? Undoubtedly, he would not. The commission must be ordered by some authority, for, being once issued with the Great Seal annexed to it, it commanded implicit obedience, and the law would admit no subsequent inquiry respecting its validity. He was of opinion that it was in the power of the two Houses to direct the Great Seal to be put to the commission, and in their power only. The Great Seal was the high instrument by which the King's *fiat* was

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irrevocably given; it was the *clavis Regni*, the mouth of royal authority, the organ by which the Sovereign spoke his will. Such was its efficacy, that even if the Lord Chancellor, by caprice, put the Great Seal to any commission, it could not afterwards be questioned. In so doing he would be guilty of a misdemeanour, but the Judges must give effect to it.* If an act of parliament receive the royal assent by a commission under the Great Seal, "*Le Roy le voet*" being so pronounced, it is added to the statute-book, and becomes the law of the land, which no one may question. Thus the '*phantom*' would prove a substantial benefit, and the '*fiction*' would end in the reality, which all good men desired." His Lordship then went on to explain, and to rely upon, the precedent at the commencement of the reign of Henry VI., when the Sovereign, being an infant of nine months old, the Great Seal was placed in his hand, or his hand was placed on the Great Seal, and it was supposed to be given by him to the Master of the Rolls; whereupon many commissions were sealed by it, and the government was carried on under its authority. He concluded by moving, "That it is expedient and necessary that letters patent for opening the Parliament should pass under the Great Seal." †

Feb. 3. 1789. Parliament opened under a fictitious commission.

At the request of the Duke of York, Lord Camden agreed that the names of the Prince of Wales and of the other Princes of the blood, should be omitted from the commission, as they all condemned this mode of proceeding, and the motion was carried without a division. Accordingly, on the following day, a commission, under the Great Seal, was produced in the name of his most gracious Majesty George III., by which his Majesty was made to declare, that "*it not being convenient for him to be personally present,* he authorised certain Commissioners to open the Parliament in his name, and to declare the causes of Parliament being summoned by him." The Commons, attending at the bar of the House of Lords to hear the commission read, the Commissioners de-

* Till repealed by *scire facias.*

† 27 Parl. Hist. 1123—1133.

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clared the causes of the summons to be, "to provide for the care of his Majesty's royal person, and for the administration of the royal authority." The two Houses did not go through the form of agreeing upon an humble address to his Majesty, in answer to his gracious speech by his Commissioners; but the Regency Bill was immediately brought in. "The Phantom" did not a second time appear to make the bill a law; for, after it had passed the Commons, and while it was in Committee in the Lords, it was stopped by the King's convalescence; and George III. remained above twenty years on the throne before there was such a recurrence of his malady as to render it necessary to resort to similar proceedings.*

May 5. 1789. Consideration of the question how the royal authority is to be exercised on the incapacity of the Sovereign.

From the course then adopted, and carried through, I presume, it is now to be considered part of our constitution, that if ever, during the natural life of the Sovereign, he is unable, by mental disease, personally to exercise the royal functions, the deficiency is to be supplied by the two Houses of Parliament, who, in their *discretion*, will probably elect the heir apparent Regent, under such restrictions as they may please to propose, — but who may prefer the head of the ruling faction, and at once vest in him all the prerogatives of the Crown. On the two occasions referred to in the reign of George III., the next heir being at enmity with the King and his ministers, this was considered the loyal and courtly doctrine, and from its apparent advancement of the rights of Parliament, there was no difficulty in casting odium upon those who opposed it: but I must avow that my deliberate opinion coincides with that of Burke, Fox, and Erskine, who pronounced it to be unsupported by any precedent, and to be in accordance with the principles of the Polish, not the English, monarchy. The two Houses of Parliament would be the proper tribunal to pronounce that the Sovereign is unable to act; but then, as if he were naturally, as well as civilly, dead, the next heir ought, as of right, to assume the government as Regent, ever ready to lay it down on the Sovereign's restoration to reason, — in the same way as our Lady Victoria would have returned to a private

* 27 Parl. Hist. 1297. See Parl. Deb. xviii. 830. 1102.; *ante*, Vol. I. 22.

station if, after her accession, there had appeared posthumous issue of William IV. by his Queen. It is easy to point out possible abuses by the next heir as Regent, to the prejudice of the living Sovereign,—but there may be greater abuses of the power of election imputed to the two Houses,—whereby a change of dynasty might be effected. I conceive, therefore, that the Irish Parliament, in 1789, acted more constitutionally in acknowledging the *right* of the next heir,—in scouting the fiction of a commission, or royal assent, from the insane Sovereign,—and in addressing the Prince of Wales to take upon himself the government as Regent.

Defence of Lord Camden for continuing to support Mr. Pitt.

After the King's recovery Lord Camden adhered (with one memorable exception) to the resolution he had announced, that, on account of his advanced age, he would no longer take part in the debates of the House of Lords; but he remained in his office, and steadily supported the administration by his councils. It has been suggested that, in his extended connection with Mr. Pitt, he abandoned the liberal principles for which he had so long struggled. But this charge is, I think, entirely without foundation. He had been called away to a better state of existence before the commencement of the trials for high treason, which disgraced the country in the end of the year 1794,—and I am not aware of any measure adopted with his sanction which might not have been brought forward under Lord Chatham or Lord Rockingham. Bishop Watson accuses him of an entire subserviency at this time to the supposed illiberal policy of the government. "I asked him," says the Bishop, "if he foresaw any danger likely to result to the Church establishment from the repeal of the Test and Corporation acts; he answered at once, '*none whatever;* Pitt was wrong in refusing the application of the Dissenters, but he must now be supported.'"—I never attach much importance to what is supposed to have fallen from any man in the laxity of private talk; but supposing this reminiscence to be quite correct, and that no qualification or circumstance to vary the effect is forgotten, might not the President of the Council, without sacrificing the Dissenters or his own consistency, hesitate about breaking up the government on their account, and wait for a more favourable A.D. 1790.

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opportunity to do them justice? The Bishop might have been softened by another anecdote which he relates of Lord Camden about the same time: "I remember his saying to me one night when Lord Chancellor Thurlow was speaking, contrary, as I thought, to his conviction, '*There now, I could not do that; he is supporting what he does not believe a word of.*'" *

Lord Camden's sentiments on the French Revolution.

Lord Camden, like many very sincere and steady friends of liberty, was much appalled by the excesses of the French Revolution, and was alarmed lest our free institutions, the growth of ages, and the result of reason and experience, might be endangered by reckless Jacobin innovation. Any expressions which he might use while labouring under such impressions are not to be nicely weighed for the purpose of making out a charge of inconsistency against him. Burke having sent him a copy of his "Appeal from the new to the old Whigs," received from him the following answer:

"Brighton, August 5. 1791.

"Sir,

His letter to Mr. Burke.

"I have received with great pleasure your last publication which, as it professed to be sent by the author, I determined to read through with the utmost attention, that I might afterwards proportion my thanks to the value of the present.† I have done so, and am ready to declare my perfect concurrence in every part of the argument from the beginning to the end, and return you my warmest thanks for presenting me with so valuable a performance, though perhaps my acknowledgment of its merit may lose some part of its grace by my being an interested party, as I am in the success of the doctrine. The commendation of one convert (and I have no doubt there will be many) would be a stronger testimony of its value than the applause of hundreds that needed no conviction. I, for instance, like many others, have always thought myself an old Whig, and hold the same principles with yourself; but I suppose none, or very few of us, ever

* Bishop Watson's Memoirs, p. 162.

† I must confess that, for conscience sake, I follow just the opposite rule — always returning thanks when I have read the title-page.

thought upon the subject with so much correctness, and hardly any would be able to express their thoughts with such clearness, justness, and force of argument. I am therefore, as well as them, better instructed how to instruct others than I was before.

"There is only one passage in your book that gives me the least concern, and that is where you talk of retiring from public business. For though, as a member of the administration, I might be well enough pleased at the Opposition's losing one of its ablest assistants, yet I shall be sorry to see the Parliament deprived of so strenuous an advocate for the constitution.

"As an old Whig therefore, and not as a minister, give me leave to subscribe myself,

"Your most obliged and obedient Servant,

"CAMDEN."

# CHAPTER CXLVIII.

## CONCLUSION OF THE LIFE OF LORD CAMDEN.

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A.D. 1791. His services in passing the Libel Bill.

LORD CAMDEN showed his sincere and unabated attachment to his early political principles by his zealous support of Mr. Fox's Libel Bill, which otherwise never would have passed the House of Lords. Near the close of the session of 1791 Thurlow threw it out, under pretence that there was not time to consider it, but not before Lord Camden had made an admirable speech in its favour, showing that the jury were the proper judges of the seditious tendency of any writing called a seditious libel. He said,—"I have long endeavoured to define what is a seditious libel, but have not been able to find any definition which either meets the approbation of my own mind, or ought to be satisfactory to others. Some Judges have laid down that any censure of the government is a libel. Others say, that it is only groundless calumnies on government that are to be considered libels; but is the Judge to decide as a matter of law whether the accusation be well or ill founded? You must place the press under the power of Judges or Juries, and I think your Lordships will have no doubt which to prefer."*

His reasoning in defence of the rights of jurors. A.D. 1792.

In the following year the bill again came up from the Commons, and Thurlow did his best to defeat it. He summoned the Judges, and obtained from them an unanimous opinion that the question of 'libel or no libel?' was one of pure law, for the Court alone,—and two law Lords, Lord Bathurst, an Ex-chancellor, and Lord Kenyon, the Chief Justice of the King's Bench, combined with him to extinguish the rights of juries. But the veteran champion of those rights was undaunted. "Nothing can be more refreshing to the lovers of liberty, or more gratifying to those who venerate the judicial character, than to contemplate the

* 29 Parl. Hist. 731.

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glorious struggle for his long-cherished principles with which Lord Camden's illustrious life closed. The fire of his youth seemed to kindle in the bosom of one touching on fourscore, as he was impelled to destroy the servile and inconsistent doctrines of others—slaves to mere technical lore, but void of the sound and discriminating judgment which mainly constitutes a legal—and above all a judicial mind."*

May 16.

His great speech against Lord Thurlow.

In the memorable debate which decided the fate of the bill,—rising in his place slowly and with difficulty,—still leaning on his staff, he thus began:—"I thought never to have troubled your Lordships more. The hand of age is upon me, and I have for some time felt myself unable to take an active part in your deliberations. On the present occasion, however, I consider myself as particularly, or rather as personally, bound to address you—and probably for the last time. My opinion on this subject has been long known; it is upon record; it lies on your Lordships' table; I shall retain it, and I trust I have yet strength to demonstrate that it is consonant to law and the constitution." His voice, which had been at first low and tremulous, grew firm and loud, and all his physical, as well as mental powers, seemed animated and revived. He then stated with his wonted precision what the true question was, and he argued it with greater spirit than ever. Alluding to his favourite illustration, from a trial for murder, he said, "A man may kill another in his own defence, or under various circumstances, which render the killing no murder. How are these things to be explained?—By the circumstances of the case. What is the ruling principle?—The intention of the party. Who decides on the intention of the party? The Judge? No! the jury! So the jury are allowed to judge of the intention upon an indictment for murder, and not upon an indictment for a libel!!! The jury might as well be deprived of the power of judging of the fact of *publication*, for that, likewise, depends upon the *intention*. What is the oath of the jury? Well and truly to try the *issue joined*—which is the plea of not *guilty* to the whole charge." In going over the cases,

* Lord Brougham's Lives of Statesmen, iii. 178.

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when he came to *Rex* v. *Owen*, in which he gained such distinction as counsel for the defendant, he explained how he had been allowed to address the jury, to show the innocence of the alleged libel. "Then," said he, "came *Rex* v. *Shebbeare*, where, as Attorney-General, I conducted the prosecution. I went into court predetermined to insist on the jury taking the whole case into their consideration; and so little did I attend to the authority of the Judges, that, in arguing the character of the libel, I turned my back upon them, directing all I had to say to the jury-box. In the days of the Charles's and James's, the doctrine now contended for would have been most precious; it would have served as an admirable footstool for tyranny. So clear is it that the jury are to decide the question of '*libel or no libel?*' that if all the bench, and all the bar, and the unanimous voice of Parliament, were to declare it to be otherwise, I could not change my opinion. I ask your Lordships to say, who shall have the care of the liberty of the press? the Judges or the people of England? The jury are the people of England. The Judges are independent men! Be it so. But are they totally beyond the possibility of corruption from the Crown? Is it impossible to show them favour in any way whatever? The truth is, they possibly may be corrupted — juries never can! What would be the effect of giving Judges the whole control of the press? Nothing would appear that could be disagreeable to the government. As well might an act of Parliament pass, that nothing shall be printed or published but panegyrics on ministers. Such doctrines being acted upon, we should soon lose every thought of freedom. If it is not law it should be made law — that in prosecutions for libel, the jury shall decide upon the whole case. In the full catalogue of crimes, there is not one so fit to be determined by a jury as libel." Before he concluded, he took an opportunity to pay a just tribute of respect to his old rival, Lord Mansfield, now almost in the tomb, into which he himself was so soon to follow him. "Though so often opposed to him," said he, "I ever honoured his learning and his genius; and, if he could be present, he would bear witness that personal rancour or animosity never mixed with our controversies.

When, after this last effort, I shall disappear, I hope that I, too, may have credit for good intentions with those who differ from my opinions, and that perhaps it may be said, '*through a long life he was consistent in the desire to serve his country.*'" This speech was warmly complimented by all who followed, on both sides, in a two-nights' debate, and gained a majority of 57 to 32 for the second reading of the Bill.

The general expectation was, that it would be allowed to pass silently through its subsequent stages; but Thurlow, trying to damage it in Committee by a nullifying amendment, Lord Camden was again called up, saying, that "he would contend for the truth of his position as to the right of juries, in cases of libel, to the last hour of his existence, *manibus pedibusque.*" When he had reiterated his argument, the amendment was rejected.

June 1. 1792.

His last words in the House of Lords.

*Lord Chancellor.*—"I trust the noble and learned Lord will agree to a clause being added to the bill, which he will see is indispensably necessary to do equal justice between the public and those prosecuted for libels. This clause will authorise the granting of a new trial, if the Court should be dissatisfied with a verdict given for the defendant."

*Earl Camden.*—"What! after a verdict of acquittal?"

*Lord Chancellor.*—"Yes!"

*Earl Camden.*—"No, I THANK YOU!!!"*

These were the last words he ever uttered in public. The bill, in its declaratory form, was then suffered to pass through the Committee, and to be read a third time; Lords Thurlow, Bathurst, and Kenyon, signing a strong protest against it. This is to be honoured as a great example of a law Lord boldly declaring and acting upon his own deliberate and conscientious conviction upon a question of law, contrary to the unanimous opinion of the Judges when asked their advice for the assistance of the House.—Now that the mist of prejudice has cleared away, I believe that English lawyers almost unanimously think that Lord Camden's view of the question was correct on strict legal principles; and that the act was properly made to *declare* the right of the jury to determine

* 29 Parl. Hist. 1404—1534.

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upon the character of the alleged libel, instead of *enacting* it as an innovation.

Salutary operation of the Libel Bill.

No law ever operated more beneficially than that which had been so long and so violently opposed by legal dignitaries. It put an end to the indecent struggle in trials for libel between the Judge and the jury, which had agitated courts of justice near a century; it placed the liberty of the press on a secure basis; all the predictions that it would encourage seditious publications and attacks on private character have been falsified; and we have now the best definition of a libel — "a publication which, in the opinion of twelve honest, independent, and intelligent men, is mischievous and ought to be punished." The bill bears the name of Mr. Fox, because he introduced it into the House of Commons, while the merit of it is claimed by the admirers of Erskine, on account of his glorious fight for the rights of juries in the case of the Dean of St. Asaph; but Pratt had struggled successfully for its principle long before these names were ever heard of, and to him we must ascribe its final triumph.* His perseverance is the more meritorious, as he might have had a plausible pretext for taking a contrary course from the multiplication of seditious writings, and the democratic movement then supposed to threaten the public tranquillity; but he wisely thought that the vessel of the state is best prepared to encounter a storm by making a *jettison* of abuses.

Lord Camden retires from public life.

Lord Camden survived two years. Although his mental faculties remained unimpaired, he did not again appear before the public. He wished to have resigned his office, but it was not convenient that a vacancy should be made in the cabinet, and "the King claimed a continuation of his services while he was so well able to perform them." Every possible indulgence was shown him. Cabinets were often held at his house; and draughts of deliberation were sent to him into the country, where he now for the most part resided.

Dec. 7. 1793.

His private friendships continued to be cherished with

* It is said that Lord Camden had prepared the draught of Mr. Fox's Libel Bill many years before, but kept it back till he saw there was a chance of carrying it. — *Europ. Mag.* Aug. 1794, p. 93.

unabated ardour. Thus, a few weeks before his death, he addressed the Duke of Grafton:

His last letter to the Duke of Grafton.

"I am more restored than I ever expected to be, and, if I can combat this winter, perhaps may recover so much strength as to pass the remainder of my days with cheerfulness: but I do not believe it possible ever for me to return to business, and I think your Grace will never see me again at the head of the Council Board. It is high time for me to become a private man and retire. But, whatever may be my future condition, whether in or out of office, I shall remain with the same respect and attention,

"Your Grace's most faithful Friend," &c.

His death.

Finding his health seriously affected by the severity of the season, he soon after removed from Camden Place, in Kent, to his town residence in Hill Street, Berkeley Square. Here he gradually sunk, more through the gentle pressure of time than any particular disorder. He quietly breathed his last on the 13th of April, 1794, in the eighty-first year of his age,—exactly thirteen months after the decease of his great rival, Lord Mansfield, who had attained the more venerable age of eighty-nine.

His burial.

His remains were deposited in the family vault, in the parish church of Seal, in Kent. A monument has there been erected to his memory, with an epitaph, which, after stating his age and the various offices he held, thus concludes in language which, though dictated by the piety of an affectionate son, posterity will re-echo.

His epitaph.

"Endowed with abilities of the highest order, with learning deep and extensive, with taste discriminating and correct, with talents in society most instructive and agreeable, and with integrity universally acknowledged, he lived beloved by his family and friends, respected and venerated by his country, and died universally regretted by all good men."

His character by Horace Walpole.

Among all the Chancellors whose lives I have written, or who are yet in prospect before me, there is no one whose virtues have been more highly estimated than Lord Camden's. We may conceive how he was regarded in his own age, from the character of him by Horace Walpole, ever anxious, by sarcasms and sneers, to lower even those whom he professed to exalt. "Mansfield had a bitter antagonist

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in Pratt, who was steady, warm, sullen, stained with no reproach, and a uniform Whig. Nor should we deem less highly of him because private motives stirred him on to the contest. Alas! how cold would public virtue be if it never glowed but with public heat! So seldom, too, it is that any considerations can bias a man to run counter to the colour of his office, and the interests of his profession, that the world should not be too scrupulous about accepting the service as a merit, but should honour it at least for the sake of the precedent."

By another contemporary.

A contemporary writer says: — "He was blessed by nature with a clear, persuasive, and satisfactory manner of conveying his ideas. In the midst of politeness and facility, he kept up the true dignity of his important office: in the midst of exemplary patience, (foreign to his natural temper, and therefore the more commendable,) his understanding was always vigilant. His memory was prodigious in readiness and comprehension; but, above all, there appeared a kind of benevolent solicitude for the discovery of truth, that won the suitors to a thorough and implicit confidence in him." *

As a Judge.

I find nothing hinted against him as a Judge, except "that he was a little too prolix in the reason of his decrees, by taking notice even of inferior circumstances, and viewing the question in every conceivable light." The same objector adds: — "This, however, was an error on the right side, and arose from his wish to satisfy the bar, and his own mind, which was, perhaps, to a weakness, dissatisfied with its first impressions, however strong." † Both as an Equity and Common Law Judge, his authority continues to be held in reverence by the profession.

As a politician.

As a politician, he is to be held up as a bright example of consistency and true patriotism to all future generations of English lawyers, and the high honours which he reached should counteract the demoralising effect of the success

* Almon's Anecdotes, vol. i. p. 384.

† Another grave charge brought against him was that "he wore a tie wig in Court instead of a full bottom, and that he had been frequently observed to garter up his stockings while the counsel were most strenuous in their eloquence." — *Almon's Anecdotes*, vol. i. 384.

which has too often attended tergiversation and profligacy,— when these calculations are aided by the recollection that such success, however brilliant, will neither secure permanent admiration nor real happiness.

His eloquence.

Lord Camden's eloquence is not free from tinsel — but still it is characterised by sterling vigour of thought, richness of imagery, and felicity of diction. Like most great English lawyers, and unlike most great French and Scotch lawyers, he never aimed at literary distinction. His only known printed production was "An Inquiry into the Process of Latitat in Wales." But he had a great taste for reading, which did not confine itself to legal and antiquarian lore. It is said that throughout life he was a devourer of romances, including the interminable tomes of Scuderi,— and that the "Grand Cyrus" and "Philidaspes" furnished him many an evening's repast, for which his appetite was sharpened by the juridical labours which had occupied the morning. In his youth, he followed the example of Lord Chancellor North in devoting himself, as a relaxation from study, to music,—in which he seems to have made great proficiency; for, his friend Davies planning an opera to be set to music by Handel, we find him offering to assist with his advice respecting the genius of musical verse, the length of the performance, the numbers and talent of the singers, and the position of the chorusses — in the language of an accomplished adept in the science of harmony.

His love of romances, and of music.

He was not a member (I should have been glad to have recorded that he was) of "*the Literary Club*," and he never seems to have been intimate with Johnson or Goldsmith, or any of the distinguished authors of his day. "Goldsmith, in his diverting simplicity, complained one day, in a mixed company, of Lord Camden. '*I met him*,' said he, '*at Lord Clare's house in the country, and he took no more notice of me than if I had been an ordinary man.*' The company having laughed heartily, Johnson stood forth in defence of his friend. '*Nay, gentlemen*,' said he, '*Dr. Goldsmith is in the right. A nobleman ought to have made up to such a man as Goldsmith, and I think it is much against Lord Camden that he*

He slights Goldsmith.

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*neglected him.'* "*—However, we learn likewise from the inimitable Boswell that Lord Camden was on a footing of great familiarity with him "whose death eclipsed the gaiety of nations." "I told him," says this prince of biographers, "that one morning when I went to breakfast with Garrick, who was very vain of his intimacy with Lord Camden, he accosted me thus: *'Pray now did you — did you meet a little lawyer turning the corner, eh?'* *'No sir,'* said I. *'Pray what do you mean by the question?'* *'Why,'* replied Garrick, with an affected indifference, yet as standing on tip-toe, *'Lord Camden has this moment left me. We have had a long walk together.'* 'JOHNSON. *Well, sir, Garrick talked very properly. Lord Camden was a* LITTLE LAWYER *to be associating so familiarly with a player.'* "†—But in another mood Johnson would have highly and deservedly praised the LITTLE LAWYER for relishing the society of a man who was a most agreeable companion, and of high intellectual accomplishments, as well as the greatest actor who ever trod the English stage.

His intimacy with Garrick.

His habits.

Lord Camden is said to have been somewhat of an epicurean — indisposed towards exertion, bodily or mental, unless when roused to it by the necessity of business or the excitement of strong feeling; — and to have taken considerable pains in supplying his larder and his cellar with all that could best furnish forth an exquisite banquet. It is certain that he was himself always extremely temperate, forming a contrast in this and other particulars with his immediate predecessor on the woolsack, — for his conversation was ever polished and decorous. He seems to have been most amiable in private life, and to have had in a distinguished degree,

His old age.

——"that which should accompany old age —
Honour, love, obedience, *troops of friends.*"

With many political opponents, he was without a personal enemy.

Portraits of him.

Lord Camden was in stature below the middle size, but well proportioned and active. We have several exquisite portraits of him. That painted for the City of London, by

* Bosw. Life of Johnson, iii. 336. † Ib.

Reynolds, is one of the finest specimens of the English school. Judging from these, his physiognomy, without marked features or deep lines, was more expressive of gentleness of disposition and frank good-humour than of profound thoughtfulness or stern resolution. CHAP. CXLVIII.

With the exception of an occasional slight fit of the gout, he enjoyed uninterrupted health. He had never had the smallpox, and it is related of him, as a weakness, that he was always much afraid of taking that disorder — his terrors being greatly aggravated when his friend, Lord Waldegrave, died of it at the age of fifty. *

His descendants.

He left a son, John Jeffreys, who, in 1812, was created Marquis Camden and Earl of Brecknock, and who was not only distinguished for his public services, but for the disinterested renunciation of the legal profits of his tellership beyond a very limited amount,—to the great benefit of the public revenue.

Lord Chancellor Camden is now represented by his grandson, the present Marquis, who out of respect for his own virtues, and for the memory of his ancestors, has been decorated with the garter which his father wore. †

* Nich. Lit. An. viii. 533.

† Grandeur of the Law, 27.

# APPENDIX

TO

## THE LIFE OF LORD CAMDEN.

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George Hardinge's Life of Lord Camden.

It has often been stated that George Hardinge, the Welsh Judge, who was a nephew of Lord Chancellor Camden, had written a Life of that great man, and collected for publication his speeches and judgments. While the preceding Memoir was going through the press, the present Marquis Camden has discovered, and kindly communicated to me, all that had been accomplished, or at least all that remains of this undertaking. The very lively and ingenious, but rather eccentric and irregular, George Hardinge, famous for his solution of the American question, by showing that "all Americans were represented in parliament by the Members for Kent, the lands of the United States being held of the Crown as of the Manor of Greenwich,"— had seriously entered on this task, and had composed a "Table of Contents" from which he was to begin the work, and likewise a "Preface," as if he had finished it. These I give *in extenso*, and they will be found very curious. As to completing his plan, he seems to have proceeded *raptim et sparsim*. But several detached parts of the work which I subjoin are exceedingly graphic and interesting, and I strongly recommend them to the notice of the reader. — The judgment in Shipley's case, though perhaps rather too highly praised, is likewise well deserving of perusal.

"Contents."

"Lord Camden's birth.
State of his father's age
and repute — at the time.
—— his father's death.
—— his entrance into Eton College.
—— his election into King's College.
—— formed his classical taste at these two colleges.
It never changed.
The character of it in his eloquence,
and in his pen —
— an elegant simplicity
The accident at King's, which gave birth
to the political habit and principle } of his life.
He found a party of Whigs leagued in a deadly feud } against Tories.
My father at the head of it. They adopted him into their Cabinet.
His memorable words to me upon this topic.
Whig and Tory defined and distinguished.
—— Not a hard student — but rather a cursory than a superficial reader. He read with genius.
—— applied with reluctance to the law.
—— fond of convivial habits and convivial talents.

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—— but abstaining from vice.
—— read, as before, at broken intervals.
—— early and late made a rule of turning rules into their principles.
—— formed an acquaintance
with Hawkins Brown
and with Henry Fielding.
Short character of both as given by him.
—— became intimate with Lord Northington, who took a fancy to him.
—— called to the bar.
—— very little business.
—— hated it.
—— was often going to leave it.
Davis's poem to him — prophetic.
—— Western Circuit.
—— writes a Law Essay in 1745.
A most ingenious performance — recovered and republished by me.
1752. Writes a pamphlet in favour of the Jew Bill — a very admirable work.
—— upon the Western Circuit recommended and pushed by Lord Northington.*
—— made a King's Counsel.
—— acquired great fame in Oxfordshire election.
—— high in repute.
—— tempted into the Court of Chancery, at a risk.
Lord Hardwicke used him ill.
—— would not hear him.
—— in 1757 upon the verge of ruin (from this ill treatment).
—— rescued by two miracles:
1. The resignation of Lord Hardwicke.
2. Lord Chatham's passion for him.
—— his veneration for Lord Hardwicke.
The visit paid by Lord Chatham.
—— opens all his great principles.
They agree.
—— makes him his Attorney General.
—— puts him over Charles Yorke's head.
Lord Chatham's character described.
Lord C.'s principles and his conduct as } Attorney General. †
—— instances of his integrity.
—— of his high spirit,
and zeal for liberty.
—— his memorable exertions to improve the Habeas Corpus. ‡
—— his declaration that the jury were judges of the libel —
—— before Ld. M[d]. who held the opposite opinion, but surrendered it in fact, though not in words, upon the next occasion.
His character of Lord Mansfield.
King's death.
Tories come in.
He is made C. Justice by force — his words upon it.
The good fortune of that change, and its wonderful effect upon his future character. §
—— would have been lost under the shade of Lord Chatham but for this.
Wilkes and general warrants. ||
Lord C[n]'s abilities and courage.

* This is the earliest part of the MS. which has been preserved.
† p. 360. ‡ p. 360. § p. 361. || p. 361.

—— his judgment on the seizure of papers.
—— his argument in the House of Peers on a famous cause.
—— conflict between Lord Hardwicke and him.
—— character of Judge Gould.
—— gives judgment upon a very curious point against Lord M[d].
—— his opinion as to General Warrants — confirmed at last by Ld. M[d]. himself.
—— his refusal to give new trials, and the consistency of it proved.
—— a popular character — Freedoms and gold boxes.*
—— made a Peer by the Rockinghams.
—— whence not partial to Lord Chatham.
The Rockinghams not very partial to Lord Chatham or to the new Peer.
His peerage was adopted by him as a popular measure.
His eloquence and spirit upon the right of taxing America — which he disputes in two capital speeches.
One of them recovered, and published by me.
He detects Lord Mansfield
in a fiction.
He continues to support the Americans. He never deserts them.
Lord Chatham's letter to him.
He is made Chancellor.
His personal regard for the Duke of Grafton.
It never is impaired.
His *début* from the woolsack inauspicious. †
He is for a time the victim of obloquy,
incited and goaded against him
by Lord Temple.
His character and conduct as Chancellor in his Court. ‡
His judgment in Shipley's appeal — one of the noblest compositions in the world.
His eloquent speech upon the East India dividend.
His éloge upon Dunning.
Dunning's character. §
Ld. C[n]'s wonderful display of talent in the Douglas cause. ‖
His memory, acuteness, and judicial powers at the height.
His éloge upon Lord Mansfield in the case of Dissenters.
His bar. ¶
Character of Lord Walsingham.
His decrees.
Consummate performances.
His opinion of Sir E. Wilmot.
His character and style of speaking.
His reprimand of a culprit forced upon him at the bar of the Lords.
—— turns himself out upon the Midd. election.
—— becomes a powerful champion for America.
His eloquence and abilities on the subject of literary property.
1772. Another attack upon Lord M[d]. as to the right of juries over the libel.
—— a debate upon it in the House of Commons. Lord M[d]. victorious.
Ld. Chatham's death.
American independence.
Lord C[n]'s warning voice neglected,
till it was too late.
His great powers upon Fox's India Bill.
Made Pres[t] of the Council.
His opinion of Lord Lansdown.

* p. 361.

† This alludes to the legality of infringing an act of parliament and the "forty days' tyranny."

‡ p. 362. § p. 363. ‖ p. 363. ¶ p 363.

—— resigns.
—— made Pres[t] of the Council again.
His opinion of Mr. Pitt.
His wonderful powers at the Board of Privy Council.
His good fortune as to the rights of Juries.
His opinion sanctioned by the Legislature.
At the age of 77 he makes as brilliant a speech as ever he made in his life in support of the bill.
His able statement of the Regency measures.
His decay and last illness.
— his change of political sentiments.
— his opinion respecting Dumourier.
Sketch of his domestic life and character." *

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"Preface.

"Personal gratitude and personal affection to the Good and Great who have closed their scene upon earth, are elevated sentiments. They are debts of honour to the departed spirit.

"But there is a *third party* in the contrast whose claim is imperious upon attachments like these. A public interest is at stake in the example, and calls upon the historian, who had the most familiar access to it, for a living resemblance to the character of the portrait.

"There is a delicacy and pride in esteem when challenged by the eloquent appeal of departed genius and virtue. Nothing is more injurious to its honour than a lavish intemperance of praise.

"But a delight in calling back to the world a favourite character may surely be indulged without prejudice to the discipline of conscience and of religious truth. For 'what is true fame' (to borrow an image from the most eloquent of men) 'but in the consenting judgment of honest men? It is *their* answer to virtue, and like that of an echo to the voice, it is animated by the impression it repeats.'

"To this memorial of Earl Camden's life I am impelled by two co-operating motives — by a sense of love to him, and by a demand of the public interest. Aware of my own peril in the effort, I overcome the fear, and sustain it by a reflection that I could not, as an honest man, decline a task imposed by the union of two such claims upon me.

"This favourite of his country and of its proudest honours, conferred upon me good offices of a nature truly parental. He conferred them with all the generous prejudices and vigilant attentions of the duty thus adopted and self-imposed.

"But in course of time his predilections ripened into confidence. He indulged me with his familiar habits.

"Upon most of the leading events in his powerful career through the world, he unveiled himself to me with all that simplicity of character which formed so engaging a part of his nature.

"He was a man who hated falsehood, and who had contempt for the miscalculated vanity of self-importance.

"The notices therefore imparted by him to me are so far memorable that in *them* is to be found the *whisper* (if it must not be called a *soliloquy*) of a discerning and most ingenuous mind overheard in the bosom of retirement."

Fragments of the Life of Lord Camden, by George Hardinge.

"At an early period he formed an acquaintance, and friendly as well as pleasant intercourse, with Mr. Henley, afterwards Earl of Northington, who, His acquaintance

* It is very gratifying to me to find that my Memoir omits so few of the topics above enumerated, and that George Hardinge, as far as he goes, corroborates my statements.

with Lord Northington.

as I often heard him say, was the most practical and generous friend of his youthful ambition — recommended him upon the circuit when he was at the head of it, and upon one occasion transferred all his briefs to him, either disabled by illness, or called away for some higher demand upon his professional talents. It has been told another way — that all the eminent counsel had been pre-engaged on one side, and that upon a complaint by the adversaries to Mr. Henley, who had the lead, he said, 'Why don't you go to young Pratt?' 'Who is he?' cried the attorney. 'What signifies who he is? take him,' said Henley, 'and see what you can make of him.' I never heard him state the particulars from him, as he had a contempt for such anecdotes; but he has in general told me that he was for a long time very poor, very obscure, and very little employed.'

No assistance from father's fame.

He never derived the least advantage from the distinguished repute of his father. "It was not worth a guinea to me, that I can recollect," were his own words.

Chippenham election case.

"From the time he was thoroughly known his advancement at the bar was rapid. He was counsel in the Chippenham election, which gave a death-blow to Sir Robert Walpole as the Minister; and Lord C. often described the political incidents which accompanied that event in a very entertaining manner.

Liberty of the press.

"His opinion was congenial to that of Milton, as an advocate for the unlicensed press; and that Government should see how they demeaned themselves."

Habeas Corpus.

After referring to the bill to amend the Habeas Corpus act, introduced in 1758, the author says: "The Attorney General, who had prompted this measure, voted and spoke as an advocate, for its reception, with eloquence and spirit. The bill was rejected in the House of Peers. Proud was the day for Britain which attested the unexampled phenomenon of the Minister and of his Attorney General holding up and spreading their shield over the rights of the subject against even a contingent abuse of the executive power, in opposition to a majority of the Cabinet. I am not aware that, except on this one occasion, he ever spoke in the House of Commons; and I know his opinion to be, that an Attorney General ought rather to be reserved than forward in political debates, unless where great principles of the constitution are implicated."

Libel act.

In giving the history of the passing of the Libel Bill, he says: "I shall never cease to lament that I did not personally hear this parting voice of his gifted and superior mind. But I perfectly remember that, before the bill passed, I was in the House of Peers when Lord Thurlow (no every-day's adversary) asked of him, from the woolsack, to agree to some amendment in the title or preamble of the bill. His answer was, in perfect good-humour, 'No, I thank you, my Lord. You may conquer me, if you can; but I will never capitulate. 'Intentum animum tanquam arcum habuit; nec senectuti succubuit. I remember that when the question was put, Lord Thurlow said, 'I am afraid the *Contents* have it.'

"One salutary consequence has followed from the bill. Instead of a disgraceful squabble and captious warfare between the Judge and the juries, they have gone hand in hand for the punishment of libellers."

His sense of duty as Attorney General.

"I have heard Lord Camden say, that he felt himself responsible, in the office of Attorney General, to the public as well as to the Ministers, and that he never prosecuted, or countermanded prosecution, or signed a warrant, if it was not the act of his own advice and judgment, by which he was ready and willing to abide, instead of throwing it off, and shifting it upon the Government; that he interposed himself as a judicial officer between the executive Government and the subject; that he acted as a kind of referee, accountable to both parties, by a tacit compact, for a sound and virtuous exercise of discretion; that he had made this point with Lord Chatham at their first interview; that he commended him for making it, and assured him of support, adding these memorable words: 'You shall not fight single-handed.'

"He refused obedience to the warrant from the Board of Treasury, directing him to countermand farther prosecution. He wrote his ground of refusal. He

told them, he was not apprized by the warrant either of their grounds for prosecuting, or of the reasons which had induced them to be more lenient; that he could not, therefore, act blindfolded, but that, as it happened he had a very accurate knowledge of their ground for prosecuting, because it was impressed upon them by him that the defendant had since been convicted, by two verdicts, of a dangerous fraud on the Government; that he could not therefore, in conscience, give to such a convict the charter of impunity which they had prompted. He took the opportunity of reminding them, with spirit and with dignity, that he was answerable to the public, as well as to his conscience, for the due execution of a judicial trust imposed upon him by his patent. The Board, at first enraged, had the good sense and the manliness, after cool reflection, to confess themselves in the wrong, and to reclaim the letter, so that it should not appear against them."

Lord Ferrer's case.

"When Lord Ferrers was tried, in Westminster Hall, before his peers, for murder, Mr. Pratt's luminous and pertinent manner of stating the material facts were so distinguished, that I heard many excellent judges of legal eloquence call that work (for it is in print, as he delivered it,) a masterpiece of its kind. His cross-examination upon the topic of insanity was judicious, acute, and impressive. I remember the effect, as it were yesterday, when he said, 'Had the noble prisoner at the bar a power of distinguishing, as a moral agent, between right and wrong, or was he ignorant, in your opinion, that murder was an offence to God as well as man?'

Lord Camden's judicial excellence.

"His talents, however, as an advocate, brilliant as they were of their kind, in the Court of Chancery, at the Board of Privy Council, and in appeals to the House of Lords, fell very short of those for which he was reserved upon the Bench, and which he had soon the opportunity of displaying, for the public advantage, in a degree which no time can obliterate."

His opinion of Lord Hardwicke.

"He has often told me, that in the Court of Chancery multitudes would flock to hear Lord Hardwicke as to hear Garrick; that his clearness of arrangement and comprehension of the subject were masterly, but that his *address* (and he laid emphasis upon the word), in the turn which he gave to all, whether he was in the right, or was to 'make the worse appear the better reason,' was like magic.

His kind manner of speaking of Lord Mansfield.

"I never heard Lord Camden speak of Lord Mansfield in terms of asperity, or without a general praise of his wonderful talents."

He is made C. J. of the Common Pleas against his will.

"In a few months after the King's death, Lord Bute superseded the the Attorney General in that office, and raised him against his will, but it was Hobson's choice, to a vacant seat on the bench as Chief Justice of the Common Pleas. I have heard him say that he paused again and again, before he accepted this judicial office, though it was intimated that he was, at all events, to be no longer Attorney-General. It was happy for the public, and for him, that he was over-persuaded by his friends to become a judicial man. Lord Bute had no good will to him in this arrangement. He was no friend of the Whigs, or of such an Attorney General. His object was (and it was, apparently, no improvident calculation) to lay him upon the shelf for the remainder of his life. The new Chief Justice marked at once the philosophy and good humour of despair: — 'I am a figure,' said he, 'put into that nitche in the halls, and am never to leave it.' At another time he said, he was an old family picture out of fashion, and carried up stairs by force into the garret. But what are human calculations? The new Chief Justice of the Common Pleas was a short-sighted prophet as well as Lord Bute."

His judgment respecting Wilkes.

"His judgment upon the ever-memorable case of Mr. Wilkes, in all its numerous branches, evinced consummate ability, a discriminating acuteness of intellect, and that commanding simplicity of character which never deserted him. Being at Cambridge, I could not hear his speech on Wilkes's liberation, and being impatient to read it, one of the Chief Justice's admirers and friends said, 'Your academical conceit will be disappointed. There are no flowers in it. No Tully. No Demosthenes. It is very sound law — but as dry as a bone!'

Inscription

"He had freedoms in gold boxes, and sat for his picture in Guildhall. It is

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a whimsical fact that Samuel Johnson, the most avowed and flaming Tory of his age, wrote the Latin inscription, which is at the foot of the picture.

on his portrait at Guildhall, written by Dr. Johnson.

"Among the obloquies of the day, it was broadly asserted that Mr. Pitt and his Chief Justice degraded themselves by adopting Mr. Wilkes; and likewise that Lord Camden had never seen him in his life till he saw him in his own Court of Common Pleas, and that he had no personal intercourse with him. I know, likewise, that neither he nor Mr. Pitt were the favourites of that incendiary. Upon some occasion Mr. Pitt called him the libeller of the King, and blasphemer of his God — which, as being truths very unpolished, he never could forgive. As for Lord Camden, I can vouch for it, and shall not overlook it in the picture of his domestic life — that no man ever breathed who had such an abhorrence of obscenity, or of an improper liberty with sacred names."

Lord Camden had no personal acquaintance with Wilkes.

"I never saw him administer criminal justice, but I am told that he was remarkably humane, feeling, and compassionate. I remember that he thought Lord Hardwicke's Act, which made forgery capital, too severe, and that he often said, 'no policy could reconcile him to it,' — adding, however, that 'he was, perhaps, in fault, but that he could not help it.'

Lord Camden as a criminal Judge.

He disapproves of Acts making forgery a capital offence.

"I have known him often uneasy under the impression that he had misconceived a fact or an argument. I observe that, in the Court of Common Pleas, he has more than once confest himself in the wrong. It will be found that in the House of Peers, in the debate on the American tax, he alludes to these habits of his judicial conduct in a very modest and graceful manner."

His candour.

"It may seem unmanly and frivolous to lay stress upon it, but he possessed the manners of a perfect gentleman, both at the bar and upon the bench, in a degree and with an effect that elevated them into ornaments of a superior mind."

His manners.

"In plantation appeals he gave equal satisfaction, and his memory of the facts at issue in so advanced a period of his life, could with difficulty be imagined, unless by those who attested the miracle. In causes of a mixed nature from Guernsey and Jersey, his temper, address, and zeal for the good will of those islands to this country, without offence to judicial conclusions, were infinitely meritorious and most critically useful."

His merit in deciding appeals before the Privy Council.

"He delivered in the House of Peers all the regulations (in their successive details) of the intended Regency, and stated them with energy of mind unimpaired — though in a single instance he was oppressed by an attack made upon him on a topic in which it was alleged his opinion was unconstitutional, viz. as to the power of creating peers, which he had represented, and with perfect accuracy, to have been vested heretofore in Parliament. Worn out by the conflict, in a fit of low spirits, he confessed the indiscretion, and threw himself upon the mercy of his opponents."

His scrape in the House of Lords, in proposing that Peers should be created by Parliament.

"Lord Shelburne's character is too well known to demand any analysis of it, and I have only to observe that, with all his peculiarities, Lord Camden admired his debating powers above those of any other peer in his time, Lord Chatham alone excepted."

His opinion of Lord Shelburne.

"Lord Camden recommended Mr. Dunning to the office of Solicitor General. From that period, as long as he remained at the bar, he had more business than ever fell to the share of any other individual; and I am free to confess more than he should have assumed his power to execute, for to my personal knowledge he often held briefs upon the faith of his attendance, and of his argument, both which he entirely withheld from his client without pleading an excuse for it, and much less returning his fee. This habit was emulated by others, and became an *air* of those who acquired celebrity at the bar — but no fashion can justify it. If one could ever say in what part of Mr. Dunning's professional merit as an advocate his pre-eminence over others was the most conspicuous that problem would, perhaps, be solved — *at his chambers*. I remember a very marked instance of the homage then paid him by no common man, Lord Thurlow, when Attorney General. I had consulted the latter on a subject of law which bore upon my own personal interest. He invited me to dinner, and gave me his opinion at his table; but having given it, he said, 'Let us go to Dunning; he will set us right in half a minute.' The remark was prophetic as well as candid and liberal."

Character of Mr. Dunning.

"It is not a little singular that Lord Camden's outset in the House of Peers, after he became Chancellor, and his last words before he left the woolsack never to be seated upon it again, were equally unfortunate. In the course of the debate, in which he maintained 'that expulsion from the House of Commons did not by the law of parliament incapacitate the member so expelled at a future election,' Lord Chatham, who had left the administration, represented him with indiscretion at least, if not with indelicacy, as having declared the same opinion *privately* to him, when he had not in fact given his colleagues in the cabinet any *direct* information of it, although all of them perfectly knew it. This exposed him to a very animated, forcible, and popular attack upon him. His friend the Duke of Grafton was peevish in his reply, and they parted in that House with a semblance of mutual asperity."

His unlucky exit as well as entrance in the House of Lords as Chancellor.

"I was present when he took his seat as Chancellor in Lincoln's Inn Hall, and was not a little surprised, but more than a little pleased, at his readiness in deciding off hand upon the variety of motions which he heard upon what is called 'a Seal Day,' though he had left the Court for some years. It seemed as if he had been in the daily and recent habit of attention to its rules.

He takes his seat as Chancellor in Lincoln's Inn Hall.

"He found a bar elevated in its character for talents and learning. Mr. Yorke was at the head of it. Mr. De Grey, the new Attorney General, had begun to feel his ground firm as a rock under him, and Lord Rosslyn, then Mr. Wedderburn, gave powerful hints of that brilliant eloquence that was in future to make him so distinguished a figure at the bar and in the House of Commons.

The Chancery bar.

"None have denied that Lord Camden filled the judicial province of this new department, so as to unite all the suitors of this Court, and all others in one opinion concerning him — that superior talents for that seat had never fallen to the share of any man except Lord Hardwicke, who had so wonderfully enlightened the Court by his judicial experience and penetration. Lord Camden's judgment, like that of his model, was uncommonly sound, and his mode of delivering his opinion persuasive: his apprehension quick, and his explanation of the subject luminous. But no Judge, on the other hand, had less conceit of his own undisciplined opinion against the weight of precedents fixed and settled. He likewise avoided the practice of repealing acts of parliament by judicial construction, saying, that 'he could not be more or less enlightened or liberal than his law-giver had enabled him to be.' — Unfortunately he seldom wrote his judgments, so that few of them are extant as compositions."

His excellence as an Equity Judge.

"He took notes more from habit or from diffidence than from necessity; but he often dispensed with his notes, stating facts with as much accuracy as if he had read what he had written. At the Privy Council, I have known him often go through a cause which had numerous and complicated facts without a note of the arguments delivered by the counsel, and with no written preparation of any kind — with a force and perspicuity almost inconceivable. In the Downing cause he adopted a course I never saw taken by others in my life. Upon some of the topics he read what he had written from his paper — for others he depended on memory alone — and leading them into his MS., he took it up again — then left it again — without embarrassment of any kind.

His wonderful memory.

His judgment in the Downing case.

"But I have now to relate what must appear to those who have read that voluminous and complicated romance, the Douglas cause, more an experiment upon credulous minds than a miracle which evidence can attest. I had an office under him, and I attended him in his coach to the House of Lords. He was then Chancellor. Though I knew him to be anxious, I never had seen him so tremulous and flurried. He was afraid of the demand upon him, which fear he told me had induced him to write, not the whole of his argument, but the heads of it. He had shown them to me in his own hand, fairly written, upon seven or eight pages of folio paper. He said that he was afraid of not using them, and was afraid of using them too — but as it was not his habit — in such an assembly to look at a paper it should throw his thoughts into confusion. When he began to address the House, my attention was fixed upon this paper which he had rolled up. Not having at first any other occasion for it, he waived it as a kind of truncheon. From one topic he was led on to another, and through a very long as well as able and impressive argument he never unfolded

In the Douglas case.

that paper, nor was at a loss for a single fact. Lord Mansfield, who followed him, spoke from notes, and consulted them without reserve."

### Lord Camden's Judgment in Shipley's Case.

Of the collections which George Hardinge had made of his uncle's speeches, &c., there is only preserved his "judgment in Shipley's appeal," characterised by him as "one of the noblest compositions in the world." The case has lost much of its interest, and the details of it would now be tiresome; but some passages from it must ever be read with delight and instruction.

The appellant, a young man at the University, had been expelled from his college for the supposed offence of publishing a libel, aggravated, as his accusers and judges chose to say, by his being guilty of "general immorality." The college being a royal foundation, he appealed to the King, as visitor. The appeal was heard by the Lord Chancellor, who, in giving judgment, thus began:

"This jurisdiction is exercised in the right of the King, as visitor. It is, in its nature, very peculiar. It is a despotism uncontrolled, and without appeal; the only one of the kind which is known in this kingdom.

"I contemplate with pleasure so numerous an assembly, as there is no restraint upon the visitor but his own character.

"I am called upon to annul, to alter, or to sustain, the sentence passed on Mr. Shipley, the appellant. It is a judgment against this young man, which carries in it a most heavy accusation. It not only convicts him of the first charge, but adds to it a character of '*general immorality*.'

"Mr. Shipley, in his appeal, relies on three objections:—1. That the proceeding against him has been irregular. 2. That the proof was insufficient. 3. That the punishment is excessive.

"As to the first point, he says that he was not duly charged; that he had not a fair hearing, and that he was not suffered by his accusers to adduce evidence in his defence. I shall not proceed in this case as in appeals from an inferior to a superior jurisdiction by writ of error, where nothing is to be argued but what appears upon the record. For having all parties before me, and a power of judging *de novo*, I shall do complete justice by punishing, as I ought, the delinquent on the one hand, and by censuring, or by punishing, the behaviour of the College on the other, if it be such as I do not wish to see repeated."

Having stated the steps in the process, he says, "Not considering here the import of the evidence, I shall pronounce that Mr. Shipley was condemned unheard, and without such previous trial as natural justice required. Whether any fact was proved against him or no, is not, in this view of the subject, material. Such a mode of proceeding is never to be justified or allowed by a Judge. It is a natural principle of justice engraved upon the heart—not acquired from book-learning—that no one is to be condemned unheard.

"It is no apology for these learned gentlemen to allege their ignorance of the municipal code. Let any one of them now lay his hand upon his heart, and say he sincerely believes that Mr. Shipley's witnesses to prove his innocence ought to have been rejected.

"I could wish that persons who are intrusted, for ingenuous purposes, with a despotic power over youth, would understand the first principles of justice. Were it a case of ordinary discipline, or of customary punishment, I should, in this domestic forum, turn a very deaf ear to complaint, though, as representing the royal visitor, I can reverse any act. I should wish, in all such cases, to leave the governors of a college almost absolute. But in the case of expulsion, I wish for temper, and I must have it, for I must claim it. That punishment is extreme. It is capital. It inflicts academic death. An independent member of the college is, by this mark upon him, sent home degraded, stript of his degrees, and of advantages in certain professions. He comes into the world introduced by odium of character. I should expect that a proceeding, to be attended with such consequences, should be regularly instituted, should be conducted with temper, should be supported by solid proof, and be satisfactory to all reasonable minds.

"The next branch of the charge, imputing '*general immorality*,' is liable to heavier animadversion. It is most extraordinary that Mr. Shipley, after his first examination, in which this imputation had never been mentioned, should have a sentence read against him which convicts him of '*immoral habits*' unheard, unaccused, unprepared. I am free to assert, that in this part of this proceeding the respondents have behaved extremely ill; and when I consider the learning of these gentlemen, I am astonished at the fact which proves them to have branded a young man's character for ever, as far as their power extended, without putting him on his defence."

He then, as if a Judge in the first instance, enters into the merits of the case, and upon an examination of the evidence, having acquitted the appellant of the charge of publishing the libel, comes to the "*general immorality*:" "No one can appreciate the extent of this charge. What is it? or what is it not? It includes atheism, baseness, want of probity. If it had stood, it would have ruined this young man for ever. But I pronounce, that no proof maintains this charge, and I am bold enough to add, that, in making it, the Dean and Chapter have infringed the first principles of common justice."

## CHAPTER CXLIX.

LIFE OF LORD CHANCELLOR CHARLES YORKE FROM HIS BIRTH TILL HE WAS RETURNED AS A MEMBER OF THE HOUSE OF COMMONS.

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Glance at the career of Charles Yorke.

WERE it not for the melancholy spectacle which presents itself at the end of the vista, I should start on this new excursion into the field of biography with alacrity and delight. The subject of the present memoir was possessed of the finest talents,—of the most varied accomplishments,—of every virtue in public and in private life;—but when he seemed to have reached the summit of his lofty ambition he committed a fatal error, and the grave closed upon him under circumstances the most afflicting. His end was "doubtful," and it has cast a shade over the whole of his career, which ought to have appeared so brilliant. The attainment of the Great Seal proved his destruction. "As if there were contagion in the touch, instant disappointment, anguish and death — such was the strange and melancholy fate of Charles Yorke. The allegory of the eastern monarch devoting one day to supreme felicity, yet finding every hour perversely darkened with chagrin and sorrow — the fable of the Persian fruit — sweet to the eye, and ashes to the taste — were only the image and symbol of this great lawyer's miserable destiny."*

Difficulties he had to struggle against from the wealth and power of his father.

There are some examples in England of a great lawyer having a great lawyer for his son; but in most of these, as in the case of Sir Nicholas Bacon,—the father had died while the son was very young, leaving him to struggle for a subsistence. Charles Yorke, the second son of the great Lord Hardwicke, was born on the 10th of January, 1723, in a splendid mansion in Great Ormond Street. His father, then Attorney General, and making a larger income than had ever fallen to the lot of an English barrister, continued near forty years afterwards to fill the highest offices of the law,

* Law Magazine, No. LXI., where will be found an able vindication of his memory from the charge preferred by Junius.

accumulating immense wealth, and able to make a splendid provision for all the members of his family. Yet Charles, even under the enervating influence of a sinecure place which was conferred upon him,—from a noble love of honourable distinction, exerted himself as strenuously and perseveringly as if, being the son of a poor Scotch clergyman, who could give him nothing beyond a good education, he had depended entirely on his own exertions for his bread, and for his position in the world.

His industry and energy.

Like Lord Bacon, he was most fortunate in his mother; who, while his father was absorbed in professional and official duties, watched over his education with great discretion as well as tenderness. She brought up all her children in thrifty habits, and taught them the most valuable of all virtues — the virtue of self-denial. The boys, instead of going to Eton, where they were in danger of learning idleness, extravagance, and contempt of parental rule, were sent to a most excellent private school at Hackney, kept by the Rev. Dr. Newcombe, a sound classical scholar, and a strict disciplinarian. Here Charles remained from childhood till he was seventeen; and here he must have acquired the taste for literature, and the steady habit of application, for which he was afterwards remarkable. He was then removed to Ben'et (now Corpus Christi) College, Cambridge, where his elder brother had been an under-graduate two years; and he was placed, like him, under the tuition of the pains-taking Dr. Birch. Little aided by academical rules, he now devoted himself to study with great enthusiasm, and he soon gave extraordinary proofs of his progress.

His early education.

At school.

At Cambridge.

I doubt not that, upon the whole, Cambridge, as a place of education, has derived benefit from the mathematical and the classical tripos since established, and the other distinctions at present held out to rouse emulation and to encourage industry; but a spontaneous, genuine, ardent love of knowledge, which sometimes springs up in those happily born, and is fostered by the mutual converse of kindred minds, perhaps formerly led to a higher degree of mental cultivation and really valuable attainment. While Charles Yorke was an under-graduate, there was probably a good deal of general idleness among

Advantages and disadvantages of the reformed system since introduced there.

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The Athenian Letters.

C. Yorke's contributions to them.

Cantabrigians, and few could have gone through what now would be considered a creditable examination in the Greek measures or the higher mathematics; but I question whether all the present resident members of the University could compose the "Athenian Letters."

This work, consisting of two quarto volumes, I have lately perused, and I strongly recommend it to all who would, in a most agreeable manner, extend or refresh their acquaintance with the institutions, the literature, the manners, and the distinguished men of Greece at the most interesting period of her history. To it Charles Yorke was the principal contributor before he had completed his twentieth year, and, considering the knowledge of books and men which his contributions exhibit, I own they seem to me a more wonderful instance of precocity than the early Latin verses of Cowley and Milton, which clever schoolboys can so closely imitate.

History of the work.

The undertaking was commenced under the auspices of Dr. Birch, as an exercise to his pupils, for the purpose of imprinting their reading on their memory, and initiating them in English composition, so miserably neglected at our universities. Cleander, an agent of the King of Persia, is supposed to be resident in Athens during the Peloponnesian war, and to carry on a correspondence, not only with his court, but with his brother living at home, and with private friends in Egypt and other provinces of the Persian empire. These letters are stated, in a lively preface written by Charles Yorke, to be translations from a MS. in the library at Fez, in the King of Morocco's dominions, the supposed deposit of vast treasures of oriental learning.

They were first printed at Cambridge, in the years 1739 and 1740, but were communicated only to a limited number of friends under the strictest injunctions of secrecy, "from an ingenuous diffidence which forbad the authors, most of them extremely young, to obtrude on the notice of the world what they considered only a preparatory trial of their strength." In 1781, a new edition was published, still only for private circulation—the Editor paying a merited compliment to him, "of whose talents, virtues, and services, the world was unfortunately deprived when they were most

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wanted, both by his own profession and by the public." The real authorship of the different letters was now disclosed. "The work was supposed to be genuine, and a translation from an old Arabic version; but when a due interval of time has elapsed the truth may be owned; the illusion vanishes; it is a masquerade which is closed; the fancy dresses and the dominos are returned to the respective wardrobes; the company walk about again in their proper habits, and return to their proper occupations in life." *

Praise of it by Barthélemi.

A copy of this edition having been transmitted by the younger brother of Charles Yorke, created Lord Dover, to the author of the celebrated "Travels of Anacharsis," BARTHÉLEMI returned an answer, which (after making all due allowance for French politeness), must be considered a high testimony to the merits of our young countrymen:—"Si je l'avois connu plutôt, ou je n'aurois commençé le mien, ou j'aurois taché d'approcher de ce beau modèle. Pourquoi ne l'a-t-on pas communiqué au public? Pourquoi n'est-il pas traduit dans toutes les langues? Je sacrifierois volontiers mes derniers jours au plaisir d'en enrichir notre littérature, si je connoissois mieux les finesses de la langue Anglaise." †

Specimen. Cleander to Hydaspes, on the contrast between Greeks and Asiatics.

I will give, as a specimen, a "private and confidential" letter from "CLEANDER to HYDASPES, first Chamberlain of the King of Persia," upon the contrast between the manners to which he had been accustomed and those he saw in his travels:—"The first question you would, probably, have me resolve is, what peculiar difference I find in the manners of Greece and Persia; since custom has placed as many marks of distinction in the civil manners of every nation as Providence has displayed in the natural bodies of each individual. I will tell you, then. A Persian would find nothing more surprising than the unbounded freedom of action and conversation which reigns here. The councils

* Pref. xv. ed. 1798. There having been some surreptitious editions, this last edition, most splendid and correct, was given to the world by the late Earl of Hardwicke.

† Lord Mansfield's acknowledgment for his copy is touching: "Give me leave to return you my warmest thanks for the ATHENIAN LETTERS.

—— "Veteres revocamus amores,
Atque olim amissas flemus amicitias."

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of the Great King are impenetrable, we discover nothing of them till they take effect; whilst here every thing is known long before it is put in execution, and canvassed with as much liberty in common conversation as in the assemblies of the people. We approach our mighty monarch with positions of adoration, and address him in language which is used to the Deity. At Athens, the magistrates are distinguished more by being virulently abused than by any mark of authority. Pericles himself is sure to be the object aimed at by every one who writes either scandalous libels to be dispersed about the city, or performances designed for public representation. The actors themselves sometimes appear upon the stage in masks, which are made exactly to resemble the face of the person ridiculed. The Persian magnificence appears most at their entertainments; the Athenian at their solemn festivals. The Asiatic feasts are remarkable for the vast quantities of provisions, the costliness of the preparations, and the sumptuous furniture; the chief recommendation of the Greek one is the elegance and variety of the conversation, which induced an Athenian to make this observation: 'Our entertainments not only please when we give them, but the day after.' * The Asiatic taste and grandeur appear in the palaces of their princes and satraps; the Grecian in the temples of their gods and the public buildings. Not a nobleman in Persia but shows his rank by the richness of his dress and the number of his attendants; whereas here you cannot distinguish a citizen from a slave by his habit; and the wealthiest Athenian, the most considerable person in the city, is not ashamed to go to market himself. In Persia, the eyes of all are turned towards the Sovereign, and they regulate their conduct by his: in the free republics of Greece, the people are king, and resemble other monarchs in their bad qualities more than in their good ones; for they are fickle and imperious, severe and obstinate."

Manners of the Spartans.

In these letters Charles Yorke gives a lively representation of the different views that may be taken of Spartan manners.

* This reminds me of a moral sentiment I have heard given as a toast in Scotland: "May Evening's diversions bear Morning's reflections!"

Thus he praises: — "The Spartans banished Ctesiphon for saying he could talk a whole day upon any question. A rhetorician told one of their kings that eloquence was the most excellent gift to mankind; he answered, — 'You do well to say so, because when you are commanded silence you are useless.' . . . . . . I observed when I conducted the ambassador of Lacedæmon to the royal chamber, agreeably to the usual ceremony, he dropped a ring which he wore upon his finger, and in stooping to recover it made an awkward reverence to our monarch. Podarchus stood as a candidate a few months since to supply a vacancy in the chosen troop of the 300, and, upon finding he was not chosen, he went out from the presence of the Ephori with much seeming gaiety, and in a fit of laughter. They called him back, and inquired the reason of it. He answered, — 'he could not help congratulating the state in silence on being possessed of 300 braver and better citizens than himself.' At the last Olympian games, another Spartan being asked whether his victory there would be of any service to him, he replied, — 'Yes, for it would recommend him to a station before the King in battle.' The statues of the Gods are all in armour, to intimate that the people place their confidence in military force. Their sacrifices are made with uncommon frugality, because they imagine the Deity is more moved by the sincerity than the incense of the worshipper. The only prayer they offer up at the altar is, that they may receive good things for their good actions. All mourning ceases in eleven days. No one is allowed an inscription on his monument except he dies in the field. They set so much a higher value on a victory gained by stratagem than by force, that in the former case they sacrifice an ox to Mars, and in the latter no more than a dunghill cock." But thus their great lawgiver is censured in describing the results of his institutions: — "The Spartans are a proud and severe people. Let them thank Lycurgus who has made them so. Unlike the rest of the admired sages who have given salutary laws to the world, instead of enlarging the minds of an ignorant race, he has more effectually contracted them. Instead of teaching them a little condescension to others, they have learned only to set a value upon themselves. Instead of

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polishing them into an ease and benevolence of temper, he has reformed them out of it, and for the sake of avoiding the refinement of luxury, he has introduced a neglect of that humanity in the lesser offices of life, which adds such a relish to the enjoyment of it."

Reference in the Athenian Letters to English politics.

In the letters there are frequent allusions to contemporaneous English politics. Thus Charles Yorke, in another letter from Cleander to Hippias, on "Ostricism," evidently points at the resolution then generally entertained to drive Sir Robert Walpole from the helm: "No mischiefs are to be wondered at in that state where a man's merit, instead of gaining him the love of his citizens, recommends him to nothing but disgrace. Good Heavens! can there be a surer sign of universal frenzy in a commonwealth than the punishing of great virtues with a severity only due to the basest vices, and rewarding high services and the noblest achievements with such black unthankfulness?" But we must follow the youthful author in his academical career.

C. Yorke's other occupations while at Cambridge.

Avoiding Jacobite roisterers and the fellows of Trinity—"such a parcel of stupid drunken sots that the like was not in the whole kingdom*,"—not very regular at lecture, and sometimes missing chapel,—but rising in summer with the sun, and in winter lighting his own fire long before day; following with intense ardour the course of study which he preferred,—taking no relaxation but a walk with a brother Athenian, in which they planned a despatch to or from Babylon, he spent his time most pleasantly and most profitably on the banks of the Granta. In 1742, he took his degree of M.A. as a nobleman, and left the university without his merits being fully known, for he was only talked of as having agreeable manners, although "one of a set who were great *saps* and rather *exclusive*."

He takes an honorary degree.

He now seriously began the study of the law. His father, on account of the sprightliness he had displayed even in his nurse's arms, having from his infancy destined him for the bar, had entered him of the Middle Temple, while yet in his 14th year.† Before he began to "keep terms" he was

* Language of Dr. Bentley, the Master of that College.

† The Hon[ble] Charles Yorke, Esq[re], 2[nd] son of the Right Hon[ble] Philip Lord Hardwicke, Baron of Hardwicke, in the county of Gloucester, Lord

transferred to the "Honourable Society of Lincoln's Inn," of which he became a distinguished ornament.* He had contrived to keep some terms there while he was still an undergraduate. To free him from the temptations and distractions of Powis House†, where the Chancellor now lived in great splendour, our student had a set of chambers assigned to him in Stone Buildings, Lincoln's Inn, from which he was not to migrate to the paternal mansion except on "high days and holidays," by special invitation. He had not the advantage of sitting at a desk in an attorney's office; but he had often breathed a legal atmosphere, from which he had unconsciously imbibed many legal notions;—and the Chancellor, observing his acuteness and aptitude for instruction on all subjects, had taken a pleasure in expounding to him the elements of jurisprudence, and making him comprehend the bearings of any constitutional question which agitated the public mind.

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He studies the law at Lincoln's Inn.

He is assisted by his father.

Thus instructed, he made a rapid progress, and by attending the Courts in the morning, and devoting himself to Littleton and Plowden in the evening, he laid the foundation of his professional eminence. Although he never was considered a deep black-letter lawyer, he acquired the faculty of knowing where all the learning on any point that might arise was to be found, and he could prepare himself successfully to enter the lists against men who ignorantly rejoiced to think that science had never taught them to stray beyond the precincts of Westminster Hall. Even now he did not abandon his literary tastes, and by avoiding frivolous amusements, and attending strictly to the improvement of small sections of time wasted by most others, he could, without detriment to his professional progress, keep an assignation with an eminent tragic actor or painter, and carry on a clan-

His proficiency as a law student.

High Chancellor of Great Britain, was specially admitted into the Society of the Middle Temple the 1st day of December, 1735.

* "Lincoln's Inn.—The Honorable Charles Yorke, Esquire, second son of the Right Hon<sup></sup>ble Philip Lord Hardwicke, Baron of Hardwicke, in the county of Gloucester, Lord High Chancellor of Great Britain, is admitted into the Society of this Inn the 23d day of October, in the sixteenth year of the reign of our Sovereign Lord, George the Second, by the grace of God of Great Britain, France, and Ireland, King, Defender of the Faith, &c., and in the year of our Lord 1742."

† On the south side of Grosvenor Square.

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destine correspondence with a critic or a poet. These were his dissipations.

A. D. 1742. His intimacy with Warburton. A. D. 1742.

He had formed a great intimacy with the author of the "Divine Legislation of Moses," and this tyrant of the literary world was to him condescending, bland, and courteous. There is happily preserved to us C. Yorke's very interesting answer to a letter of Warburton, accompanying a presentation copy of the first volume of a new edition of his great work: —

"July 1. 1742.

"Dear Sir,

His letter to Warburton on receiving a copy of the Divine Legation.

"I was pleased, on returning home the other day after an excursion of a few weeks, to find your first volume waiting for me, with a most agreeable letter from yourself, full of kindness and vivacity. To speak the truth, I had been meditating before I received yours to say something to you on the very piece you allude to; but you have prevented me in it: — I thought only of congratulating you, but you seem to require condolence. — And surely without reason. What signifies it that your adversaries are not worth contending with? It is a proof that men of sense are all on your side. — Like the spectres whom Æneas encountered, you cannot hurt them by any weapons; but it should be remembered, on the other hand, they do not injure but tease, and will follow you the less the more you endure and despise them. You should forgive them too, for you began hostilities. The only provision in the constitution of things for the *dull* is the *indolence* of the ingenious. Therefore, when a man unites great application to great parts, throws down the fences of prejudice, and strikes out new paths in knowledge, they confederate against him as a destroyer of their merit, and a dangerous invader of their property.

"After all it is a serious and melancholy truth, that when speculative errors are to be reformed, and received opinions either rationally opposed or defended, the matter cannot be attempted without much censure. The discreet upbraid you with imprudence, the prejudiced with absurdity, and the dull with affectation. It is a censure, however, which generally

arises from interest; for the works of such as you contribute to bury many useless volumes in oblivion.

"I rejoice that you approve of the further remarks I sent you on a few passages in Tunstall's *Epistle;* not only on account of your candour in doing it, but because your sagacity has confirmed what I had thrown out, by two or three very eloquent turns of argument. Whenever you treat a subject, you leave nothing to be said after you, and for that reason can always improve upon others. But this is a trifle. The new edition of your book shows that you can even improve upon yourself. Tully, I think, says of his behaviour in the office of friendship — '*cæteris satisfacio quam maximè, mihi ipsi nunquam satisfacio.*' And in writing, it is one mark of superior understanding not to be contented with its own produce.

"Your correspondence is exceedingly acceptable to me. When I am conversing with you on subjects of literature or ingenuity, I forget that I have any remote interest in what is going forward in the world, nor desire in any time of life to be an actor in parties, or as it is called somewhere, '*subire tempestates reipublicæ.*' But when I find every body inquiring to-day concerning the report of the secret committee yesterday*, this passion for still life vanishes; *agilis fio et mersor civilibus undis.*

"I am, dear Sir, with the greatest affection and esteem,

"Your most obliged

"and faithful Servant,

"CHARLES YORKE." †

This seems to me to be a very wonderful production, considering that the writer was only nineteen years of age. He appears thoroughly to have understood the foibles as well as the merits of his correspondent; and the advice he gives him is remarkable, not only for its boldness, but the felicity of expression in which it is conveyed. We must likewise admire

* This refers to the Report of the Secret Committee on the conduct of Sir Robert Walpole, — in which it was thought that Lord Chancellor Hardwicke might be implicated. — 12 *Parl. Hist.* 788.

† Warburton's Letters, 495.

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the eagerness with which, notwithstanding his literary enthusiasm, he was ready to plunge into the waves of party strife.

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His inclination to a contemplative life.

Yet he had occasional struggles between his love of a life of contemplation and a life of action. In a subsequent letter to Warburton, he says: "The din of politics is so strong every where, that I fancy it must have penetrated into your retirement. It tempts me sometimes, in an indolent fit, to apply Lord Bacon's words to myself—that 'I discover in me more of that disposition which qualifies to hold a book than to play a part.' Yet, if you come to London this spring, you will find me engaged in what properly concerns me; but your company, whether enjoyed by letter or personally, will always draw me back to my old studies—*frustra leges et omnia jura tuentem.*"—His letters in this correspondence contain not only examples of bold criticism, but of daring speculation on theological subjects, consistent always with a belief in the great truths of revealed religion, but using considerable freedoms in proposing an allegorical interpretation of scripture.* From his marvellous proficiency,—from the ripeness of his judgment, as well as the extent of his reading, and the variety of his attainments,—we must greatly doubt whether there has been any improvement in the system of education for the bar and for public life, since his time. Had his training been a century later, he would still have been plodding for his degree without having begun the study of the law,—and he would have known nothing beyond what is to be learned in the narrow bounds of the modern University curriculum, whereas we behold him in reality, not only a sound scholar, but a fine writer, and qualified to enter into competition for fortune and fame with the most distinguished lawyers and statesmen.

He is called to the bar.

Charles Yorke was called to the bar by the Honourable Society of Lincoln's Inn, in Hilary Term, 1743, while yet in his minority,—and he almost immediately got into considerable practice.† It was a great advantage to him, no doubt, to be the son of the Lord Chancellor; but, as has been proved by

* See "Selections from Warburton's Literary Remains."

† "At a Council held the 1st day of February, 1745,—Ordered, That the Honble Charles Yorke, Esqre, one of the Fellows of this Society, being of full standing, having performed all his exercises, and observed the rules of this So-

frequent instances, this would have availed him nothing without the power of self-denial, the talents, and the energy which he displayed.

His rapid progress in business.

According to the usage then universally followed, he must have gone some circuit; but I cannot discover which he selected, or how he fared in the provinces. During term time, in London, he was so overwhelmed with briefs, that he was obliged to abandon the society and the correspondence of his friends. Hilary Term, 1744, approaching, thus he writes to Warburton: "As business is coming in apace, I know not when I shall have an opportunity of conversing with you at large upon paper, unless I busy the present in a manner to me the most entertaining in the world."

As might be expected, it was chiefly in the Court of Chancery where the solicitors were disposed to employ him — not always from the purest motives. However, for the credit of the family, he never assumed any airs from his near relationship to the Judge, nor was there ever, as far as I can trace, any well-grounded complaint of his receiving undue favour there. His father was proud of him, and had been particularly delighted with his Athenian Letters; perhaps thinking truly how much better "Cleander" wrote than "Philip Homebred," but allowed him fairly to fight his own way at the bar, neither taking any indirect means to push him forward, nor when he heard him argue at the bar, treating him in any respect differently from other counsel.*

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ciety, be called to the Bar this Term, first paying all his arrears and duties to this Society."

The following entries respecting him are likewise found in the books of the Society:

Bencher of Lincoln's Inn.

"At a Council held the 8th day of May, 1754, — Ordered, That the Hon[ble] Cha[s] Yorke, Esq[re], one of his Majesties Council learned in the law, be invited to the Bench of this Society; and Mr. White and Mr. Hammet, two of the Masters of the Bench, are desired to attend with this order, and report his answer to the next Council; and if the said Mr. Yorke do accept of this invitation, he is, according to the rules of this Society, to pay all his arrears and duties to the Treasurer of this Society before he be called to the Bench."

Treasurer.

"At a Council held the 28[th] day of November, 1755, — Ordered, That the Hon[ble] Charles Yorke, Esq[re], be Treasurer for the year ensuing."

Master of the Library

"At a Council there held the 29th day of November, 1756, — Ordered, That the Hon[ble] Charles Yorke, Esq[re], Soll[r] Gen[l], be Master of Library for the year ensuing."

* Yet it appears that Lord Camden suspected that Lord Hardwicke withheld silk gowns for the advantage of his son Charles, and slighted the young gentleman's competitors. — *Ante*, p. 237. See also George Hardinge's MS., *ante*, Appendix to Life of Lord Camden.

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As yet the fame of our aspirant was confined to the precincts of Westminster Hall and Lincoln's Inn; for then, unless there were a state trial, no notice was taken of any judicial proceedings in any journal or periodical publication; but, while in his twenty-second year, he suddenly burst upon the public as a great legal luminary. At this early age, he published the best juridical treatise that had appeared in the English language.

His treatise on "Forfeiture for Treason."

The spirit of Jacobitism had become very strong; there were general discontents in the public mind, and an invasion from France, to assist the Pretender, was daily expected. Lord Hardwicke, the Chancellor, thought it was necessary to render the laws against treason more stringent, by making it treason to correspond with the sons of the Pretender, and by continuing forfeiture and corruption of blood in cases of treason; so that all the honours, and all the property of any one convicted of treason, should for ever be lost to his children and his family. Against this last enactment there was a strong feeling, which the Chancellor's precocious son undertook to combat; not from an ungenerous nature, but from a desire to stand by his father, whose opinions he was bound to reverence. Accordingly, during the fervour of men's minds upon the subject, he brought out anonymously, but allowing himself to be soon discovered as the author, "Some Considerations on the Laws of Forfeiture for High Treason."

Wretched quality of English law books.

Of all the departments of literature, jurisprudence is the one in which the English had least excelled. Their treatises of highest authority were a mere jumble—without regard to arrangement or diction. Now, for the first time, appeared among us a writer who rivalled the best productions of the French and German jurists. He was not only an admirer, but a correspondent of Montesquieu; and he had caught a great share of the President's precision, and of his animation. In this treatise, he logically lays down his positions, and enforces them in a train of close reasoning,—without pedantic divisions, observing lucid order,—and drawing from the history and legislation of other countries the most apposite illustrations of his arguments. The following may be considered a fair specimen of the work, although without a

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Extract from Yorke's "Forfeiture for Treason."

perusal of the whole of it, an adequate idea cannot be entertained of the excellence of the plan on which he proceeds, or of the felicity with which that plan is executed: "It is not the purpose of this essay to attempt a justification of any instance in which the law of forfeiture may, in some countries, have been carried to an extremity, as little to be reconciled with principles of policy, as of clemency or justice. Amongst the Persians and Macedonians, not only the criminals convicted of treason were put to death, but all their relations and friends. The descendants of Antiphon, the orator, were disqualified from advancing themselves, by their own merit, to estates and offices in Athens. The posterity of Marius's faction were excluded by a law of Sylla from the same privileges. When these are laid out of the case, what is the force of the answer? It clearly resolves into this,—that those rights, and the power of transmitting property which are derived from the favour of society, may not be bestowed upon such terms as shall bind the possessor to his duty, and for the breach be subjected to forfeiture. As to the corruption of blood, it may suffice to say thus much of it here: that if a man is not capable of transmitting property acquired by himself to an heir, it seems a necessary consequence in reason, which is the ground of law, that he shall not be capable of receiving from an ancestor either to enjoy or to transmit; for, however society may effectuate any man's compassionate intention who would make a gift to the traitor's posterity, yet the law, which is consistent upon every occasion, and only to be moved by considerations that affect the whole, will not make an effort of itself to supply that connecting link in the chain of descent which has been struck out of it for the traitor's infamy, and the public benefit. Thus society, by making the loss of those rights it confers upon every man a penalty for the greatest crime which can be committed against his country, interests every relation and dependant in keeping him firm to the general tranquillity and welfare; at the same time, it gives him an occasion of reflecting that when he sets about it he must break through every private, as well as public tie, which enhances his crime, whilst it is an aggravation of his punishment. Nay, more, he may

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hope to escape from the justice of his country with his own life if that alone were to be forfeited; but the distress of his family will pursue him in his securest thoughts, and abate the ardour of revolution. Many instances there are of men not ashamed to commit base and selfish enormities, who have retained a tenderness for their posterity by the strong and generous instinct of nature. The story of Licinius Macer, who was father to the great orator, is very remarkable, as related by a Roman annalist. Having gone through the office of Prætor, and governed a province, he was accused upon returning home of extortion and abuses of his power. The very morning of his trial he strangled himself, after having sent word to Cicero, who was preparing to plead against him, that being determined to put an end to his life before sentence, the prosecution could not go on, and his property would be saved to the benefit of his son. Upon the whole, then, where is the wrong? It is agreeable to justice to bestow rights upon condition. It is the wisdom of governments to lay hold on human partialities."—He tries to soften the law's harshness, with which, notwithstanding his assumed boldness, he is evidently a little shocked, by observing how rarely it would be brought into practice; that it would be "like Goliath's sword in the Temple, not to be taken down but on occasions of high necessity—at other times, *in tabulis tanquam in vaginâ reconditum.*"

Merits of the question.

At the present day, while all must be charmed with his learning, his ingenuity, and his eloquence, I do not think that his reasoning will carry general conviction. He greatly exaggerates the moral guilt of the treason against which the law was to be directed—that of trying, from mistaken principle, to restore the exiled royal family,—which he confounds with the treason inveighed against by the Roman writers—that of conspiring to subvert public liberty for individual aggrandisement;—he utterly fails in his attempt to prove that the children are not punished for their father's crime, by being made infamous and cast destitute on the world;—and though a regard for the public tranquillity may require that a man shall try to bring about a revolution, whatever may be the established government, at the risk of his own

life, no reasoning can persuade us that it is just or politic to involve his posterity in his ruin.*

A.D. 1744. The great eclat he acquired by this publication.

However, Charles Yorke's performance was rapturously applauded; his father, in defending the bill in the House of Lords, made an excellent speech, all the topics of which were known to be taken from it†, — and the solicitors had no longer any scruple in giving briefs to the Chancellor's son, who had shown such acquaintance with his profession, as well as such general ability. He was now in full practice at the bar, and considered likely to outstrip his father in rapid promotion; but in such matters there is much of chance and accident, and Sir Dudley Ryder remaining Attorney General, and Murray, Solicitor, years rolled on without a vacancy.

* See 17 Geo. 2. c. 39. † Ante, p. 96.

# CHAPTER CL.

## CONTINUATION OF THE LIFE OF LORD CHANCELLOR CHARLES YORKE TILL HE WAS APPOINTED SOLICITOR-GENERAL.

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A.D. 1747. Charles Yorke is returned to parliament for Reigate.

CHARLES Yorke commenced his senatorial career in the autumn of 1747, and continued a member of the House of Commons till within a few hours of his death. He first represented the snug borough of Reigate, which had passed under the grant by King William to his grand-uncle Lord Chancellor Somers, and now belonged to his cousins, the Cocks's. He succeeded his elder brother, who was elected for the county of Cambridge.

Sonnet addressed to him on his being returned to parliament.

On this occasion there was addressed to him by Mr. Edwards the following

SONNET.

" Charles, whom thy country's voice applauding calls
To Philip's honorable vacant seat,
With modest pride the glorious summons wait,
And rise to fame within St. Stephen's walls.
Now wear the honours which thy youth befalls
Thus early claim'd from thy lov'd learn'd retreat;
To guard those sacred rights which elevate
Britain's free sons above her neighbour thralls.
Let Britain, let admiring Europe see
In those bright parts which erst too long confin'd
Shone in the circle of thy friends alone,
How sharp the spur of worthy ancestry
When kindred virtues fan the generous mind
Of Somers' nephew and of Hardwicke's son." *

From the scanty accounts handed down to us of parliamentary proceedings in the middle of the eighteenth century, it is very difficult to discover what was his success in debate. Although he sat in parliament twenty-three years,—in the "Parliamentary History" his name is only mentioned five times.† We know, from contemporary writers, that he was a smart orator, and had a considerable position in the House; but it is pretty clear that he did not support the reputation he had acquired at the bar and by his pen; and that he re-

* Cooksey, 163.

† 14 Parl. Hist. 267. 325. 1008. 1275.; 15 Parl. Hist. 270.

mained at a vast distance behind the "silver-tongued Murray," whom he strove to emulate.

May 7. 1748. His maiden speech.

His maiden speech was upon a law bill; and all that we know of it is from a letter of Dr. Birch to the Hon. Philip Yorke, containing this statement as part of the news of the day: "Your brother Charles opened his mouth on Monday, in the House of Commons, with some success, upon the Bill for the Relief of Protestant Purchasers' Trustees, &c. of Papists' Effects; against which he urged such a weight of objections, that the patrons of it, Lord Gage and Mr. Fazakerley, abandoned it without any reply; and the committing of it was postponed."*

He seconds the address.

At the meeting of parliament in November, 1748, he was selected to second the address moved by Lord Barrington,— the following short sentence being the whole record of his performance: "The Honourable Charles Yorke, second son of Lord Chancellor Hardwicke, rose and seconded, in a very able speech, the motion of the noble Lord."† However, in a letter from Mr. Etough to Dr. Birch, preserved in the British Museum, we have this testimony in its favour: "The figure Charles Yorke made the first day of the session is an agreeable piece of news. Nothing can be more pleasing than such accounts of young men, who have the additional character of probity and virtue."‡

He defends the provision in the Regency Bill by which the Princess Dowager as Regent was to be controlled by a council.

In 1751 he took a leading part in defending the Regency Bill, introduced on the death of Frederick Prince of Wales, whereby the Princess Dowager was to be appointed Regent during the minority of her son, afterwards George III.; but (to gratify the King's dislike of her, and his partiality for his younger son,) she was to be under the control of a council of Regency, with the Duke of Cumberland at the head of it. In answer to a speech of Mr. Prowse, violently attacking the measure as unconstitutional, thus spoke Charles Yorke: "Sir, as the bill now under consideration is designed to be, and certainly will be, a precedent for all future ages, I hope that honourable members, who speak for it or against it, will leave the person thereby to be appointed Regent entirely out

* Hardwicke Papers, 14 Parl. Hist. 266. † 14 Parl. Hist. 325.
‡ MSS. 4326. B.

of the question. If the present conjuncture were only to be considered, I believe that, looking to the character and disposition of the amiable Princess named, no gentleman would think of laying her under any restraints or regulations: no one would hesitate a moment in agreeing to invest her, not only with sovereign, but with absolute sway; because it would only be extending the power to do good. But when we are framing institutions for the government of society, we must not consider persons, but things. For this reason our ancestors have chosen, and have handed down to us, a limited rather than an absolute monarchy. They knew, as well as we, that a wise, active, and just king might be trusted with absolute power; that the more absolute he was, the better it would be for society: but they considered how difficult, if not impossible, it was to refuse to a bad king the authority that had been given to a good one. For the same reason, a regency during the minority or incapacity of a king has always, by our constitution, been laid under still greater restraints and limitations. I care not for the theory of the constitution, so much dwelt upon by the honourable gentleman who spoke last. From histories, records, and precedents alone can we know what the constitution really is in practice, and I defy any one to show that a regent or protector has ever been intrusted with a full and absolute sovereign power—I mean, as full and absolute a power as our kings have usually been intrusted with. The Duke of Gloucester, indeed, on the death of Edward IV., usurped a sole regency with absolute power; but no man will contend that his power was legal or constitutional; and the use he made of it can never, I am sure, be any encouragement for the Parliament to follow that precedent. Even the good Earl of Pembroke, in the minority of Henry III., when appointed Regent, was restrained from making grants under the Great Seal; and his successful government was owing to his own wisdom, not the unlimited power conferred upon him. The honourable gentleman admits, that when the King's person or his right to the Crown may be in danger, the power of the Regent ought to be restrained by a council of regency. But is it not obvious, that this argument can be least used where it is most wanted? When the Duke of

Lancaster was appointed Regent, in the minority of Richard II., was it urged that his ambition might prompt him to murder the infant King, and to usurp the Crown? No, sir; the argument made use of on that occasion was, that the constitution forbad the appointment of a regent with sovereign power, though, in charity, supposed to be a good regent,—for the same reason that we limit the authority of a supposed good king. So a council of regency was created in the infancy of Henry VI., when the Duke of Bedford was appointed Regent, and in his absence the Duke of Gloucester. If the Lords who appointed another Duke of Gloucester Protector, with sovereign power, in the minority of Edward V., had not been guided more by resentment against the Queen-mother and her relations than the rules of our constitution, the Plantagenet line might still have been upon the throne. There is here no slight intended to the Princess. In the three minorities to which I have referred, the mother of the infant-sovereign was entirely passed over in the appointment of a regent;—and a striking proof is given of his Majesty's sense of the known virtues of the Princess by proposing her as Regent. If she is to be laid under restraints, this does not proceed from any jealousies we can entertain of her character. These restraints are only such as every wise king would choose to lay upon himself. Would any wise king choose to make peace or war, to prorogue or dissolve parliaments, or to remove any great officer of state, or appoint bishops or judges, without consulting men who have worthily served their country, and who are the most capable of giving good advice to the Crown? As to the council of regency, their power is merely restrictive; they have no active power; they cannot so much as meet except when called by the Regent, and when they do meet they can take nothing under consideration but what her Royal Highness may recommend to them: they can act in nothing; their resolutions will signify nothing without her concurrence; and if they should refuse to consent to any act necessary for the good of the kingdom, they are removeable on the joint address of the two Houses of Parliament. This formidable council of regency will, therefore, rather be a

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security to the Regent than an obstruction to any of her measures; for, though by our state maxim 'the King can do no wrong,' I doubt whether that maxim can be applied to one who is appointed to govern, as Regent, in the King's name; and therefore it may much import the Princess, when Regent, that she should be able to make it appear, by an authentic document, that what she does has been thought by responsible advisers to be the most proper and necessary measure for the public good. I would willingly invest her Royal Highness with the full exercise of all the prerogatives of the Crown, if this course were not absolutely inconsistent with our constitution, and if there were not an apprehension that the precedent, on some future occasion, might be attended with the most fatal consequences. This alone makes me do violence to my own inclination, and compels me to banish from my thoughts the personal qualities of the illustrious lady now to be appointed Regent. If others would consider the Regent as a constitutional abstraction, I am fully persuaded that there would be a general unanimity as to the appointment and powers of the council, and no one would propose a course which would be quite novel in our history, and the remote consequences of which might bring upon the authors of it the curses of posterity." *

Horace Walpole, in an account of this debate sent to his correspondent at Florence, says, "Lord Strange and Sir Roger Newdigate both spoke against the bill, and Charles Yorke, a young lawyer of good parts, *but precise and affected*, for it." † I must own that there is a good deal of flippancy as well as sophistry in this smart harangue, and that the orator is rather gently handled by the critic. Murray followed in a more statesmanlike strain, — and upon a division the "council clause" was carried by a considerable majority.

He moves the address.

The next occasion on which we can trace Charles Yorke in the House of Commons, was the first day of the session of 1753, when he moved the address. We, accustomed to see some tender scion of nobility brought forward for such a task,

* 14 Parl. Hist. 1008.

† Letter to Sir H. Mann, May, 1751. Hor. Walp. Mem. Geo. II. p. 108.

are surprised to find it assigned to a practising lawyer who had been several years in parliament. He seems to have been a good deal laughed at for proposing "to acknowledge his Majesty's *wisdom*, as well as goodness, in pursuing measures calculated to preserve the general tranquillity of Europe." The Earl of Egremont moved that the words "wisdom as well as" be left out, and other members violently censured the measures which were supposed to show such "wisdom as well as" goodness; but the amendment was negatived, and the address carried without a division." *

He defends his father in the House of Commons against Henry Fox.

In the same session Charles Yorke restored and extended his reputation by a spirited defence of his father, when attacked for bringing forward the famous "Marriage Act." Henry Fox, its great opponent, having dilated very offensively on "the chicanery and jargon of the lawyers, and the pride of their Mufti," went on to apply to the Chancellor the story of a gentlewoman at Salisbury, who, having a sore leg, sent for a country surgeon, who pronounced that it must be cut off; "the gentlewoman, unwilling to submit to the operation, sent for another more merciful, who said he could save her leg, and that no operation was necessary; the surgeons conferred; the ignorant one said, 'I know it might be saved, but I have given my opinion, my character depends upon it, and we must carry it through;'—so the leg was cut off." Charles Yorke, rising in great anger, thus began: "It is new in parliament—it is new in politics—it is new in ambition"—He then proceeded to draw a lofty character of his father, and describing in glowing terms the height to which he had raised himself by his merit, concluded by telling Fox how imprudent it was to attack a man so capable of vindicating himself and retaliating upon his accuser. Mr. Fox, in reply, tried to raise a laugh against him, by repeating and playing upon his words, "Is it new in parliament to be conscientious? I hope not. Is it new in politics? I am afraid it is. Is it new in ambition? It certainly is to attack such authority." † However, the House sympathised with the

* 14 St. Tr. 1275.

† Fox was luckier in an encounter with another lawyer in the same debate. He held in his hand a copy of the bill, in which were written in red ink the

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pious son, and these gibes were considered in bad taste. When the amended bill came back to be discussed in the Lords, the Chancellor introduced his famous attack upon Fox by a very touching allusion to the manner in which he had been defended elsewhere by one near and dear to him, and in which "the incendiary had been punished." *

Henry Fox's deep resentment against him.

This quarrel made so deep an impression on the mind of Fox, that though generally a good-natured man,—when he heard at Nice many years after of Charles Yorke's death, and the melancholy circumstances which attended it, he thus wrote to a correspondent with an affectation of querulousness, but with real malignity: —"I never envied Mr. Yorke whilst he lived, but I must take leave to envy him and every body else when they are dead: I comfort by persuading myself it is happier to wish for death than to dread it, and I believe every one of my age does one or the other. But I do not find myself near a natural death, nor will you see me hanged, though I verily think they will never leave off abusing me." And writing soon after to George Selwyn, who delighted in looking at old friends when laid out for burial, he says, with savage jocularity, "Yorke was very ugly whilst he lived,—how did he look when he was dead?" †

Feb. 8. 1754. His speech on the Mutiny Bill.

The last important speech of Charles Yorke was delivered in the year 1754, upon the subject of extending the "Mutiny Act" to the East Indies, when all the old arguments being brought forward about standing armies and martial law, he ably showed the necessity of keeping up a military force in those remote regions, and the impossibility of doing so unless soldiers might be tried by a military tribunal for an infraction of the Articles of War.‡ Although no other fragments of his eloquence are to be found in the regular records of the proceedings of Parliament, we know from contemporary

amendments moved by some members who pretended to be its friends. The Solicitor General, standing near him while speaking, said, "how bloody it looks." Fox answered, "Yes; but thou canst not say I did it:

'See what a rent the learned Casca made.
Through this the well-beloved Brutus stabb'd.'"

* 15 Parl. Hist. 84.; Hor. Walp. Geo. II. 299.

† Hor. Walp. Lett. iv.

‡ 15 Parl. Hist.

memoirs that he continued to speak and to be respectfully listened to, in the House of Commons, on every constitutional question which arose till near the close of his career.

He keeps up an intercourse with Warburton.

Meanwhile, amidst all the distractions of business, and the anxieties of ambition, he preserved his better tastes, and he was glad to escape from the wrangling of lawyers, and the slang of the House of Commons, to criticism and philosophy. He still kept up a close intercourse, by visits and letters, with Warburton. On one occasion, having been disappointed in the hope of finding him at Prior Park, he thus shows the impression made upon him by this picturesque place, where the "humble Allen" had entertained POPE: "The natural beauties of wood, water, prospect, hill and vale, wildness and cultivation, make it one of the most delightful spots I ever saw, without adding any thing from art. The elegance and judgment with which art has been employed, and the affectation of false grandeur carefully avoided, make one wonder how it could be so busy there without spoiling any thing received from nature." After controverting an emendation by Warburton of the text of "*Measure for Measure* *," he proceeds to give him some excellent and much-needed advice,— to be more tolerant to authors who differed with him: "It is to be expected, where any writer has the marks of an original, and thinks for himself, producing *de suo penu* things wholly new to most understandings, that some will have their difficulties to propose; others their tenets to maintain; and few will give a ready assent to truths which contradict prevailing notions, till time and posterity have wrought a gradual change in the general state of learning and opinions. What wonder, then, that many should write against you? How natural that you should defend! It was expected from you. The zeal for knowledge is commendable: the deference to mankind becomes you. But here lies the mischief. You

His description of the beauties of Prior Park.

His advice to Warburton.

* The Duke, in the character of a friar, says to Claudio, in order to prepare him for death, and dissuade him from a reliance on his sister's intercession with Angelo:

"Do not *satisfy* your resolution with hopes that are fallible."

The divine proposes to read "falsify;" but the lawyer shows that "satisfy," in the sense of *discharge*, is the true reading.

and your adversaries stand upon unequal ground. They engage with that best friend and second on their side—vulgar prejudice. Let their insinuations be ever so malignant, provided they write *dully* they gain the character of writing *coolly!* How natural that you should expostulate! If your expostulations have been sometimes too warm, they were not the bitter overflowings of an ill-natured mind, but the unguarded sallies of a generous one. Yet even such sallies are not forgiven you: not because those you answer have deserved better, but because sensible and candid men are disposed to think too well and too highly of you to forgive that in you which they would overlook in others. And therefore, could nobody permit you to reverence yourself as much as I do, you would wait with patience that period when '*Answers*' will be forgotten: unless (according to the epigram of Martial) you choose to give flies a value and an immortality by entombing them in amber. It is to flatter me exceedingly to intimate that I have contributed to lead you into those sentiments, in which the very tædium of controversy, and the pursuit of noble designs, must necessarily confirm you."*

Subsequently, when he had acquired great reputation in public life and the most brilliant prospects were before him, thus he addresses the great scholar and divine:—"I endeavour to convince myself it is dangerous to converse with you, for you show me so much more happiness in the quiet pursuits of knowledge and enjoyments of friendship than is to be found in lucre or ambition, that I go back into the world with regret, where few things are to be attained without more agitation, both of reason and the passions, than either moderate parts or a benevolent mind can support."†

He procures for Warburton the preachership of Lincoln's Inn, and a prebend at Gloucester.

He proved the sincerity of his friendship for Warburton by obtaining for him the "preachership" of Lincoln's Inn, which was in this instance, and so often has been, the stepping-stone to a bishopric, and by prevailing upon his father, who had ceased to have much respect for literature, to give him a prebendal stall. Thus writes the prebendary-elect to his

* Warburton's Correspondence, 498. † Ib. 505.

crony Hurd: — "Last Sunday the Chancellor sent me a message with the offer of a prebend of Gloucester, as a mark of his regard, and wishes it had been better. I desired Mr. Charles Yorke to tell him that no favours from such a hand could be unacceptable. Yorke of his own mere motion told me he intended to write to the Master of the Rolls to recommend you in case of a vacancy. He does not know the force of his interest, but he shall push it in the warmest manner." Hurd was disappointed at the Rolls, but by the interest of Charles Yorke who adopted him into his friendship, and prized him more highly than posterity has done, he succeeded Warburton in the preachership of Lincoln's Inn, which in his case likewise led to a mitre. Upon this occasion he wrote to Warburton, saying, — "It will be an election unanimous, but as little attentions please, I shall endeavour to prevail upon him when I have the pleasure of seeing him, to *mount timber* on Sunday as a compliment to the Benchers."* Warburton thereupon warily suggested to Hurd, — "Mr. Yorke may be right in your not being too punctilious about sermons at first. But take care not to accustom them to works of supererogation, for as puritanical as they are, they have a great hankering after that Popish doctrine."

He patronises Hurd, who succeeds Warburton at Lincoln's Inn.

Charles Yorke likewise kept up a constant correspondence with the President Montesquieu, of which the following letter to him from that distinguished jurist and philosopher is unfortunately the only remnant preserved to us: —

His correspondence with the President Montesquieu.

"Monsieur, mon très cher et très illustre Ami,

"J'ai un paquet de mes ouvrages, bons ou mauvais, à vous envoyer; j'en serai peut-être le porteur; il pourra arriver que j'aurai le plaisir de vous embrasser tout à mon aise. Je remets à ce tems à vous dire tout ce que je vous écrivois. Mes sentimens pour vous sont gravés dans mon cœur, et dans mon esprit, d'une manière à ne s'effacer jamais. Quand vous verrez Monsieur le Docteur Warburton, je vous prie de lui dire l'idée agréable que je me fais de faire plus ample connoissance

* This was in vacation time, and it is the duty of the preacher of Lincoln's Inn to officiate only during the terms.

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avec lui; d'aller trouver la source du sçavoir, et de voir la lumière de l'esprit. Son ouvrage sur Julien m'a enchanté, quoique je n'ai que de très mauvais lecteurs Anglois, et que j'ai presque oublié tout ce que j'en sçavois. Je vous embrasse, Monsieur. Conserves-moi votre amitié; la mienne est éternelle.

"MONTESQUIEU.

"à Paris, ce 6 Juin, 1753." *

His chambers in Lincoln's Inn are burnt down.

In the autumn of the same year, Charles Yorke left England with the intention of visiting the President at his château in Gascogny, and accompanying him to Bourdeaux, that he might see how justice was administered in the parliament there; but he was recalled home before this object could be accomplished.

I ought not to pass over a misfortune which had befallen him, the severity of which I can the better appreciate, from having been visited by a similar one myself.† In the night of the 5th of July, 1752, a fire suddenly burst out from his staircase in Stone Buildings, Lincoln's Inn. He narrowly escaped with his life, but he suffered an irreparable loss, in which the whole nation participated—the invaluable State Papers in thirty volumes folio, collected by his grand-uncle, Lord Somers, and made over to him, having been all reduced to ashes. Warburton says,—"They were full of very material things for the history of those times, which I speak upon my own knowledge." Perhaps posterity had a heavier loss in the destruction of Charles Yorke's own MSS.; for although he was too modest to talk much of them, it was generally believed that he had prepared for the press several

* In sending a copy of this letter to Warburton, Yorke observes: "His heart is as good as his understanding in all he says or writes; though he mixes now and then a little of the French *clinquant* with all his brightness and solidity of genius, as well as originality of expression." Corresp. p. 507.

† When I was Attorney General, my chambers in Paper Buildings, Temple, were burnt to the ground by fire in the night time, and all my law books and MSS., with some valuable official papers, were consumed. Above all, I had to lament a collection of letters written to me by my dear father, in a continued series, from the time of my going to College till his death in 1824. All lamented this calamity except the claimant of a peerage, some of whose documents (suspected to be forged) he hoped were destroyed; but, fortunately, they had been removed into safe custody a few days before, and the claim was dropped.

law treatises, which would have rivalled the fame of the "Considerations on Forfeiture for Treason;" and Cowper's verses, on a like misfortune which befel Lord Mansfield, might have been addressed to him:—

> "And Murray sighs o'er Pope and Swift,
> And many a treasure more,
> The well-judg'd purchase and the gift
> That grac'd the letter'd store.
>
> "Their pages mangled, burnt, and torn,
> The loss was his alone;
> But ages yet to come shall mourn
> The burning of his own."

He soon got a new set of chambers, and furnished his shelves with new copies of such books as could be obtained from the booksellers; but even in consulting reports and law treatises—for years there was almost daily something annoyingly reminding him of those he had lost,—which were made valuable to him by notes and scratches, and with every page of which he had formed an endearing familiarity.

His marriage.

For this, or some better reason, he became tired of a bachelor's life, and being now in his thirty-third year he resolved to enter the holy state of wedlock. The object of his choice was Catherine, only child and heiress of William Freeman, Esq. of Aspeden, Herts, a granddaughter of Sir Thomas Pope, Bart., of Tittenhanger. To her he was united on the 19th of May, 1755, and with her he lived most happily till after bringing him three children, she was snatched away to an early grave.

Solicitor General to the Prince.

Though still what we in our time should consider quite a youth at the bar, who ought to be pleased with the prospect of gradually getting into a little business, he compared his father's progress with his own, and he was exceedingly dissatisfied to think that he was not yet made a Judge or a law officer of the Crown. So far back as 1747 he had had a feather put into his cap by being made Solicitor General to the Prince of Wales, and the year following he had obtained the lucrative appointment of counsel to the East India Company. But his only other preferment hitherto had been the grant of clerk of the Crown to him jointly with his brother John Yorke, the grasping Chancellor being desirous to keep

His sinecure.

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A. D. 1756.

He is discontented, and meditates leaving the profession of the law.

this good thing in the family as long as possible. Disappointed at not sooner obtaining the real honours of the profession, Charles now talked of leaving it altogether, and taking entirely to the political line, in which he flattered himself he might rise to be Prime Minister. It appears that he had infused his discontented notions into his friends. Warburton writes to Hurd, "Yorke, who has spent the holidays with me, has just now left me to return to the bar, whose nature, virtue, and superior science, in any age but this would have conducted their favourite pupil to the bench." *

At last an opening appeared to have arisen. On the 25th of May, 1756, died Sir Dudley Ryder, Chief Justice of the King's Bench, the day before he was to have kissed hands on being raised to the peerage, and it was expected that this would make an immediate move in the law. But the assistance of Murray, the Attorney General, was so essentially necessary to the Duke of Newcastle's government in the House of Commons, that, although he demanded the Chief Justiceship as of right, the office was kept vacant six months, in the hopes of bribing him to forego his claim. In the mean while, the Chancellor being supposed to have all the law appointments at his disposal, his son earnestly pressed that now some arrangement might be made whereby he might be promoted. On the 2d of June, 1756, thus wrote Mr. Potter, the son of the Archbishop, to Mr. Pitt: —

"Charles Yorke who has long had a wish to quit the profession, has taken advantage of this opportunity, and has sternly insisted with his father, that, unless he makes him Solicitor General now, he will immediately pull of his gown. The Chancellor yields, and has promised either to make him Solicitor, or to consent that he shall quit the profession and be a Lord of the Admiralty. I think I know which side of the alternative the Chancellor will take. On Murray's leaving the bar, and Charles Yorke becoming Solicitor General, he would get at least 4000*l.* per annum. The Chancellor will compute how much that exceeds the salary of a Lord of

* Warb. Corresp.

the Admiralty, and the vices of the family will probably operate, so as to keep poor Charles in the only train in which he can be of any consequence."*

On the promotion of Murray to be Chief Justice of the King's Bench, Charles Yorke made Solicitor General.

Murray having at length obtained the Chief Justiceship by the threat of withdrawing from public life, the administration was subverted, and Lord Hardwicke resigned the Great Seal. But he contrived that the desired promotion should be bestowed upon his son, who, on the 6th of November, 1756, was sworn in Solicitor General.

* Chatham Correspondence, i. 160.

## CHAPTER CLI.

CONCLUSION OF THE LIFE OF LORD CHANCELLOR CHARLES YORKE.

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Charles Yorke presides at the ceremony of Lord Mansfield taking leave of Lincoln's Inn, when about to be made Chief Justice of the King's Bench.

THE first public duty cast upon Charles Yorke after his promotion, was to make a complimentary speech on the elevation of a rival. Murray, the Chief-Justice-elect, was to take leave of the Society of Lincoln's Inn previous to going through the preliminary form of being made a Serjeant at Law, that he might thereby be qualified to become a Judge. Mr. Solicitor, being then the Treasurer or head of the Inn, according to ancient usage, presented the departing member with a purse of gold as a retaining fee, and addressed him in a flowing oration, extolling his eloquence, his learning, and his qualifications for the high judicial office which he was about to fill. The very words of the answer are preserved, from which we may judge of the talent and the courtesy exhibited on both sides: "I am too sensible, Sir, of my being undeserving of the praises which you have so elegantly bestowed upon me, to suffer commendations so delicate as yours to insinuate themselves into my mind; but I have pleasure in that kind partiality which is the occasion of them. To deserve such praises is a worthy object of ambition; and from such a tongue, flattery itself is pleasing. If I have had in any measure success in my profession, it is owing to the great man who has presided in our highest Court of judicature the whole time I attended the bar. It was impossible daily to come into his presence without catching some beams from his light. The disciples of Socrates, whom I will take the liberty to call the great lawyer of antiquity, since the first principles of law are derived from his philosophy, owe their reputation to their having been the reporters of the sayings of their master. If we can arrogate nothing to ourselves, we may boast the school we were brought up in; the scholar may glory in his master, and we may challenge past ages to show

us his equal. My Lord Bacon had the same extent of thought, and the same strength of language and expression, but his life had a stain. My Lord Clarendon had the same abilities, and the same zeal for the constitution of his country; but the civil war prevented his laying deep the foundations of law, and the avocations of politics interrupted the business of the Chancellor. My Lord Somers came the nearest to his character; but his time was short, and envy and faction sullied the lustre of his glory. It is the peculiar felicity of the great man I am speaking of, to have presided near twenty years, and to have shone with a splendour that has risen superior to faction, and that has subdued envy. I did not intend to have said so much upon this occasion; but with all that hear me, what I say must carry the weight of testimony rather than appear the voice of panegyric. For you, Sir, you have given great pledges to your country, and large are the expectations of the public concerning you. I dare to say you will answer them."

Proud day for Lincoln's Inn.

For us Lincoln's Inn men, this was, indeed, a proud day. The greatest of common law Judges, on his own inauguration, spoke so eloquently of the greatest of Equity Judges now in retirement, after a judicial career of unequalled length and brilliancy,—and held out seemingly well-founded anticipations that the son who was addressed, would rival his father's glory. All three were members of Lincoln's Inn, and the scene was acted in Lincoln's Inn Hall, amidst a crowd of barristers and students, many of whom, if fortune had been propitious to a display of their talents, would have been hardly less distinguished.

Charles Yorke disappointed by Pratt being made Attorney General.

In the following year, the Solicitor General expected further promotion, but was doomed to a severe disappointment. After some months of anarchy which followed the resignation of the Duke of Newcastle and Lord Hardwicke, during which the Great Seal was in commission, and there was a perpetual shifting of the principal offices of state, the Court was obliged to surrender at discretion to Mr. Pitt, who then formed his famous administration. He bore no good will to the House of Yorke, and although he would not dismiss Charles from the office held by him, he insisted

July, 1757.

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on making his old school-fellow, Pratt, Attorney General. This was most highly distasteful to Mr. Solicitor; but after consulting his father and his friends, he consented to swallow the bitter pill presented to him. Pratt was his senior at the bar, and had now risen into high reputation, so that it was no degradation to serve under him. They acted with apparent cordiality, though it was said that Yorke never forgot the affront, and was actuated by the recollection of it in his intrigue against Lord Camden, when he was himself to have become Chancellor under Charles Townshend, and in the negotiation which closed his own career, when, in an evil hour, he actually received the Great Seal, that Lord Camden might be cashiered.

Quiet times at home during Mr. Pitt's administration.

Opposition being now annihilated, the Attorney and Solicitor General had very light work in the House of Commons, and their official duty chiefly consisted in advising the government (which they did most admirably) upon numerous questions of international law, arising during the prosecution of the war.

June 12. 1758. Charles Yorke Counsel on the trial of Dr. Hensey.

The first great occasion when they appeared together in public, was on the trial of Dr. Hensey, at the King's Bench bar, for high treason, in carrying on a correspondence with the French, and inviting them to invade the realm. It was the part of the Solicitor General to sum up the evidence for the Crown, but he declined to do so, reserving himself for the general reply on the whole case,—a course which Lord Mansfield and the whole Court held he was entitled to pursue. His reply was distinguished by great moderation and mildness of tone, as well as perspicuity and force of reasoning. The prisoner was convicted,—but on account of attenuating circumstances, he was afterwards pardoned.*

His celebrated reply in Lord Ferrers's case.

The only other state prosecution in which Pratt and Charles Yorke were jointly engaged, was that of Lord Ferrers, before the House of Peers, for the murder of his steward, of which I have given an account in the Life of Lord Northington, who then presided as Lord High Steward.† The Solicitor General's reply on this occasion is one of the finest forensic displays in our language, containing,

* 19 St. Tr. 1342—1382

† Ib. 945.; ante, p. 194.

along with touching eloquence, fine philosophical reasoning on mental disease and moral responsibility. "In some sense," said he, "every violation of duty proceeds from insanity. All cruelty, all brutality, all revenge, all injustice, is insanity. There were philosophers in ancient times, who held this opinion as a strict maxim of their sect; and, my Lords, the opinion is right in philosophy, but dangerous in judicature. It may have a useful and a noble influence to regulate the conduct of men; — to control their impotent passions; — to teach them that virtue is the perfection of reason, as reason itself is the perfection of human nature; — but not to extenuate crimes, nor to excuse those punishments which the law adjudges to be their due."

Every Peer present said, "Guilty, upon my honour;" and when the unhappy culprit had expiated his offence at Tyburn, homage was done throughout the world to the pure and enlightened administration of criminal justice in England.

His affliction on the death of his first wife.

About this time Charles Yorke sustained a blow which long rendered tasteless all the applause with which his efforts were crowned. He lost the chosen partner of his fate whose participation of his good fortune gave it all its value. When a little recovered, he described his anguish, and the sacred source of his consolation, in a letter to his friend Warburton, which has unfortunately perished, for it might have been equal to the letter written on a similar sad occasion by Sir James Mackintosh to Dr. Parr, — one of the most beautiful of mortal compositions.* We may judge of its tone from the language of Warburton in transmitting it to Hurd: —

* Perhaps it contained sentiments such as these: "My only consolation is in that Being under whose severe but paternal chastisement I am bent down to the ground. The philosophy which I have learned only teaches me that virtue and friendship are the greatest of human blessings, and that their loss is irreparable. It aggravates my calamity, instead of consoling me under it. My wounded heart seeks another consolation. Governed by these feelings, which have in every age and region of the world actuated the human mind, I seek relief and I find it in the soothing hope and consolatory opinion that a Benevolent Wisdom inflicts the chastisement as well as bestows the enjoyments of human life; that superintending goodness will one day enlighten the darkness which surrounds our nature and hangs over our prospects; that this dreary and wretched life is not the whole of man; that an animal so sagacious and provident, and capable of such proficiency in science and virtue, is not like the beasts that perish; that there is a dwelling-place prepared for the spirits of the just, and that the ways of God will yet be vindicated to man." — *Life of Mackintosh*, i. 97.

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"This morning I received the enclosed. It will give you a true idea of Yorke's inestimable loss, and his excellent frame of mind. He has read, you will see, your Dialogues. And was he accustomed to speak what he does not think (which he is not), at this juncture he would tell his mind, when labouring with grief.

'Nam veræ voces tum demum pectore ab imo
Ejiciuntur, et eripitur *Persona*, manet res.'" *

Sept. 1761. On the accession of Geo. III. C. Yorke adheres to Lord Bute.

Upon the accession of George III. Charles Yorke was continued in his office of Solicitor General, and from feeling rather a dislike to Mr. Pitt he seems early to have attached himself to Lord Bute. He saw without regret the resignation of the "Great Commoner †," and when Pratt was "shelved," as was supposed in the Court of Common Pleas, the Attorney Generalship was joyfully conferred upon the Solicitor, who was expected unscrupulously to go all lengths against Wilkes. I think he has been too severely blamed for his conduct at this period. He did file the criminal informations for "No. 45. of the North Briton," and for the "Essay on Woman;" but few will deny that the one publication was seditious, or that the other was obscene. He was not consulted by Lord Halifax about issuing "general warrants," and he might have been pardoned for saying that they were *prima facie* legal, as they had been issued by all Secretaries of State since the Revolution, however inconsistent they might be with the principles of the constitution. Although he ought to have opposed the folly of burning libels by the common hangman, which led to such serious riots and mischief, it should be recollected that this was a practice then approved by grave statesmen. He was fully justified in pro-

Jan. 25. 1762. He is made Attorney General.

Oct. 1761. His conduct as a law officer after Mr. Pitt's resignation.

* Warb. Corr. 292.

Letter from Warburton to Mr. Pitt respecting C. Yorke.

† Warburton, in a letter to Mr. Pitt, written soon after, tries to remove from his mind the impression made by some of Yorke's manifestations of satisfaction on this occasion :

"Prior Park, Oct. 17. 1761.

. . . . "The Solicitor General has just now left this place after a visit to me of a few days. I should be unjust to him on this occasion to omit saying that to me he ever appeared to hold you in the highest honour, and your measures (as soon as ever the effects appeared) in the highest esteem. I ought in justice to add further, that he deceived me greatly if, at that very time when your just resentments were about breaking out against the Duke of Newcastle, he did not use his best endeavours, both with the Duke and his father, to repair their treatment, and to procure you satisfaction. But he had not then that influence with them which he has had since." — *Chat. Corresp.* ii. 161.

ceeding to outlawry when the demagogue had fled from justice, — and no farther step had been taken in the affair when he threw up his office of Attorney General. He resorted to this resolution when, after the resignation of Lord Bute and the death of Lord Egremont, the government could not go on, and various attempts to strengthen it had failed. He then made way for Sir Fletcher Norton, who was appointed Attorney General on the formation of the administration, which was called the "Duke of Bedford's," but in which George Grenville, fatally for our colonial interests, soon gained the ascendency.

He resigns the office of Attorney General, Oct 1763. Dec. 16. 1763.

Freed from the trammels of office (as has often happened), Yorke raised his reputation as a debater. Although his name is not afterwards once mentioned in the "Parliamentary History," we know from contemporary letters and incidental notices that he condemned the issuing of "general warrants," but that he strenuously contended that privilege of parliament does not extend to the case of seditious libel. On this last subject he gained the victory over Pratt, and rivalled Pitt himself, who was in the habit of exalting or disparaging the power of the House of Commons, as it suited his purpose. We have a lively sketch of the "Privilege Debate" from Horace Walpole: "Mr. Pitt, who had the gout, came on crutches, and wrapped in flannels, but was obliged to retire at ten at night, after making a speech of one hour and fifty minutes; the worst, I think, I ever heard him make in my life. For our parts, we sat till within ten minutes of two in the morning; yet we had but few speeches, all were so long. Charles Yorke shone exceedingly. He had spoken and voted with us the night before; but now maintained his opinion against Pratt. It was a most able and learned performance; and the latter part, which was oratorio, uncommonly beautiful and eloquent. You find I do not let a partiality to the Whig cause blend my judgment. That speech was certainly the masterpiece of the day. Norton would not have made a figure if Charles Yorke had not appeared; but, giving way to his natural brutality, he got into an ugly scrape."*

Charles Yorke in opposition. Jan. 1765. He condemns general warrants and the conduct of government respecting the Middlesex election.

* Horace, afterwards writing to Lord Hertford, says: "Mr. Yorke's speech in our House, and Lord Mansfield's in your's, carried away many of the opposition."

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Dunning's attack on Lord Hardwicke and Charles Yorke.

In the course of these discussions, Dunning, who had a great spite against the Yorkes, made a violent attack both on the father and the son. "If I were," said he, "to characterise a late great Chancellor, I should say that I cannot think he merited the appellation of a patriot, having ever regarded him as a decent, circumspect, prerogative lawyer; that he leaned, in his notions, too much towards aristocracy; that he seemed, in his politics, to approach much nearer to the principles of the Earl of Clarendon than of Lord Somers; and that, at last, upon what public principles I could never learn, he joined the opposition, after having been in all things with the Court for forty years before. I could never determine whether he had, or had not, a good conception of our foreign interests, although I always imagined he had a thorough one of all the domestic connections amongst us. I might ask whether his Lordship did not uniformly, throughout his life, pursue his own private interest, and raise the greatest fortune, and provide the most amply for his family, of any lawyer who ever lived; and whether, during his administration, the judicial promotions were not disposed of upon ministerial motives, or agreeably to professional desert? I might, nevertheless, and ought to add, that the same illustrious personage was blessed with a good temper and great worldly prudence, which are the two handmaids in ordinary to prosperity; that his whole deportment was amiable; that he possessed, in general, the soundest understanding in matters of law and equity, and the best talents for judicature I had ever seen; and that he might be cited as an example, in this country, of the perfect picture of a good judge, which my Lord Bacon hath so admirably drawn. He was free from the levities, vices, and excesses which frequently disfigure men of a lively and fruitful fancy. His station did not require, nor his genius furnish him, with imaginative wit or eloquence, and, perhaps, had he possessed a true taste for the fine arts and the polite parts of literature, he would never have been so extensive a lawyer, — to which, however, the plainness of his education might have somewhat contributed. In short, we may say that Lord Somers and he seem to have been, in every respect, the reverse of each other." After-

wards he went on with the son: "I do not mean to forget that a certain candid lawyer united his best endeavours to strangle the *habeas corpus bill;* but then he did it in so delicate and qualified a manner, that surely he cannot expect to have his pass for a first-rate part upon the occasion. Ticklish times, or political struggles, always bring to light the real abilities of men, and let one see whether a man owes his reputation and rank to family interest, and an attention to please, or to real great parts, a sound judgment, and true noble spirit. People of the latter class become for ever more considerable by opposition; whereas the former, by degrees, sink to common men when deprived of artificial support, and should therefore never quit, for one moment, a Court; or if, by connection or chance, they are compelled so to do, should return to it again as fast as possible."* To these tremendous sarcasms, rendered more cutting from being edged with seeming candour, Yorke is said to have made a spirited reply, but, unfortunately, it is lost to us. We are only told that, passing over with slight notice the disparaging strictures on himself, he vindicated his father from all the charges brought against him. With respect to the abuse of judicial patronage, he cited the names of Ryder, Lee, Strange, Foster, Pratt, Denison, and Wilmot, promoted by him—"a series of almost sacred names requiring no epithets." Of the Ex-chancellor's private virtues he took rather a lofty estimate; but his judicial merits, which it was impossible to appreciate too highly, he justly held up to the admiration of mankind.†

Charles Yorke's defence of his father.

The Attorney General, on his resignation, appeared at first outside the bar in a stuff gown, for he had not had a silk gown before his promotion to be a law officer of the Crown, and the practice had not yet been introduced of making the

On his resigning his office of Attorney General, practises in a stuff gown.

* This is one of the best specimens of Dunning's eloquence preserved to us. Although he was for years such a brilliant debater in the House of Commons, we can judge of his powers almost exclusively by the impression which they produced. It is a curious fact, that when he went into the House of Lords he utterly failed. Lord Mansfield and Lord Brougham are nearly the only lawyers who have succeeded equally in both assemblies.

† See Law Mag. No. lxi. p. 87.

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person so promoted likewise a King's counsel, so that he may not be reduced to the ranks when he loses office.*

He receives a patent of precedence.

But the administration now in power, wishing to soften the Ex-Attorney General's hostility to them, offered him a "patent of precedence,"—to move next after the Attorney General for the time being — which he accepted as a fair mark of respect for his professional eminence. Yet this was proclaimed at White's to be a proof of tergiversation. "Opposition," writes a correspondent of George Selwyn, "seems to be on its death-bed; the Yorkes have left it: Charles Yorke has been squeamish, and would not return to his old post again, but kisses hands to-morrow for his patent of precedency. He has acted as most lawyers do out of their business, with as much absurdity, and as little knowledge of the world, as the fellow of a college." "When Charles Yorke left us," says Horace Walpole to Lord Hertford, "I hoped for the desertion of Charles Townshend, and my wish slid into this couplet:

Attacks upon him for accepting it.

"To the Administration.

"Our Charles, who ne'er was ours, you've got, 'tis true;
To make the grace complete, take t'other too."

Letter of Single-Speech Hamilton censuring Charles Yorke.

In the same strain Single-Speech Hamilton writes to Calcraft: "Mr. Yorke's patent of precedency, by himself and his friends, is stated as a piece of very disinterested conduct, but is considered by all the rest of the world in a very different light. His having a promise of being Chancellor is asserted and denied, exactly as people are differently affected to him; but the opinion of his being to succeed his brother as Teller of the Exchequer gains credit.........Mr. Yorke seemed to be so much ashamed of his patent, that he did not come to kiss hands for it on Friday, which you know was a crowded day at court."†

While Mr. Grenville was in vain trying to tax America,

* To correct this in Dunning's case, when he ceased to be Solicitor General, Lord Mansfield, with the general concurrence of the outer bar, called to him to move immediately after the Recorder of London.

† Dec. 1. 1764; Chat. Corr. 299. n.

and to extinguish Wilkes, Yorke, without supporting him, did not very actively oppose his measures, and chiefly confined himself to his practice at the bar, which continued undiminished, although he was now without the *prestige* of office. Having won the great Downing College cause, a letter of thanks, in Latin, was forwarded to him by the public orator of the University of Cambridge, under a vote of Convocation, to acknowledge his services, formerly in establishing their privilege of printing books, and more recently in obtaining a decree by which a great estate was secured to them for building and endowing a new College. This testimony was peculiarly grateful to him, as strengthening the ties which for generations connected his family with the University which they had so much adorned. Soon after he was elected one of its representatives in Parliament.

Thanks to C. Yorke from University of Cambridge.

On the formation of the first Rockingham administration, consisting of most virtuous men, with the most patriotic intentions, Charles Yorke joined them,—resuming his office of Attorney General,—and, oh! if he had never deserted them! In that case his career might have been prosperous to its termination, and he might have left an unclouded name to posterity. He did long steadily adhere to them, although he was fatally seduced from them at last. He zealously cooperated in the repeal of the Stamp Act, and the other popular measures of this short-lived government.

Aug. 25. 1765. On the formation of the Rockingham administration, C. Yorke again Attorney General.

While he was Attorney General the second time, the writ of error came to be argued before the Court of King's Bench in the famous case of *Money* v. *Leach* to determine the validity of "general warrants."* He was rather in a delicate predicament; for his own opinion, which he had expressed in parliament, was against them, and Lord Mansfield, without absolutely committing himself, had intimated pretty strongly during the discussion an agreement on this question with Lord Camden. Yet, as counsel for the Crown, he was bound to contend that the King's messenger was not liable to the

His dexterous conduct in arguing the writ of error in Money v. Leach on general warrants.

* 3 Burrow, 1692.

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action for false imprisonment brought by the plaintiff for having been arrested under a general warrant, as one of the publishers of the "North Briton, No. 45." From this dilemma Mr. Attorney dexterously extricated himself by magnifying another objection raised to his justification, and allowing the judgment of the Court to pass against him on that, while he left the main question without any formal adjudication. *

In the spring of 1766, an intrigue was going on for bringing in Charles Yorke as Chancellor to a new cabinet. Thus writes Lord Shelburne to Mr. Pitt, giving an account of a conversation he had had with Lord Rockingham: —

"In regard to the Duke of Newcastle and Mr. Yorke, though he had reason to believe they might be brought into every thing that was desired, yet it was to be wished that it should be proposed with a certain degree of regard, and that manner might reconcile men's minds to that which it would be impossible ever to force them to. I observed, or at least thought, he avoided saying whether the seals were to be Mr. Yorke's object, but seemed carefully to adhere to such general terms, upon Mr. Yorke's subject, as I have mentioned." †

C. Yorke resigns his office of Attorney General.

In July, 1766, when the Rockingham administration was unfortunately routed, Yorke, still at variance with Pitt who constructed the motley cabinet which succeeded, again resigned his office of Attorney General which he never resumed ‡, and he remained in opposition till the ever deplorable moment when he consented to accept the Great Seal.

At the time of his last resignation he narrowly missed the office of Chief Justice of the Common Pleas. On Pratt's elevation to the woolsack this was given to Sir Eardley Wilmot. The Ex-Attorney General without his "pillow,"

* 19 St. Tr. 1027.

† 24th Feb. 1766.

‡ He was succeeded by De Grey, afterwards Lord Walsingham. It would appear that an effort was then made to induce him to continue in office. Lord Chatham in a PS. to a letter to the Duke of Grafton, on the formation of this Ministry, says: —

"I saw Mr. Yorke yesterday; his behaviour and language very handsome: his final intentions he will himself explain to the King in his audience to-morrow." — *MSS. of Duke of Grafton.*

preserved his good-humour, and thus addressed his more fortunate friend:—

"Tattenhanger, August 11. 1766.

"Dear Sir,

"I know not whether you are yet Chief Justice of the Common Pleas in form, but give me leave to congratulate you and the public on your advancement. The kind and uniform friendship which you have shown me, makes me feel a real pleasure on the occasion. *Dieu vous conserve dans sa sainte garde, et moi dans votre amitié!*"

His congratulation to Sir E. Wilmot on his being appointed Chief Justice of the Common Pleas.

A copy of an elegant edition of Cicero accompanied this letter as a present, which is preserved with the following inscription upon it in Sir Eardley's handwriting:—

"The Gift of the Honourable Charles Yorke.

"Quem tu, Dea, tempore in omni,
Omnibus ornatum, excellere rebus voluisti."

Still Yorke retained his literary tastes and friendships, and he was more delighted with a new book than with a well indorsed brief. Thus he writes to Warburton, now in lawn sleeves:—

"Feb. 2. 1767.

"My dear Lord,—I cannot resist the impulse of thanking you in three words for the perusal of your new discourses, as well as your last letter. All the fruits of your friendship are pleasing to me. The book was most eagerly devoured. How do you manage always to say something new upon old subjects, and always in an original manner? The bookseller favoured me with it just on the eve of the 30th of January, and within three days of Candlemas; one of them the greatest *Civil Fast* in England, and the other the greatest Religious Festival of Antichrist. Your Lordship has furnished me with such meditations for both, that I must add it to the account of my obligations,

Letter from C. Yorke to Warburton, thanking him for a new book.

"And remain always,
"Your Lordship's most faithful
"And affectionate humble Servant,
"C. Yorke."*

* Warb. Corr. 509.

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A.D. 1769.

His second marriage.

So happy had he been with his first wife, that he had again entered the married state, being united to Agneta, daughter of Henry Jobson, Esq., of Berkhampstead, a lady of great accomplishments, with whom he lived happily, and who brought him a son, the late Sir Joseph Yorke, of the royal navy, said to have been the delight of the quarter-deck, and whom I remember the delight of the House of Commons.

His villa at Highgate.

The Ex-Attorney General now had a charming villa near Highgate where his family resided, and to which he eagerly retired as often as the Court of Chancery and Parliament would permit. There Warburton paid him a visit in June, 1769. The following letter, notwithstanding its lively tone, cannot be read without melancholy, when we recollect that the meeting which it describes was the last that ever took place between the two friends,—and that a terrible catastrophe was at hand:

Letter from Warburton, giving an account of his last meeting with Charles Yorke.

"Last Thursday we dined with Mr. and Mrs. Yorke at Highgate. It was not a good day; but we walked on his terrace, and round his domain. He has improved it much. But, in contempt of your *latebræ dulces*, you enter the terrace by the most extraordinary gate that ever was. His carpenter, I suppose, wanting materials for it, got together all the old garden-tools, from the scythe to the hammer, and has disposed them in a most picturesque manner to form this gate, which, painted white, and viewed at a distance, represents the most elegant Chinese railing, though I suspect the patriotic carpenter had it in his purpose to ridicule that fantastic taste. Indeed, his new-invented gate is full of recondite learning, and might well pass for Egyptian interpreted by Abbé Pluche. If it should chance to service the present Members of the Antiquarian Society (as it well may), I should not despair of its finding a distinguished place amongst their future '*Transactions*' in a *beautiful copperplate.* I was buried in these contemplations when Mr. Yorke, as if ashamed of, rather than glorying in, his artificer's sublime ideas, drew me upon the terrace. Here we grew serious; and the fine scenes of nature and solitude around us drew us from the Bar of the House and the Bishops' Bench to the

memory of our early and ancient friendship, and to look into ourselves. After many mutual compliments on this head, I said,—'that if at any time I had been wanting in this sacred relation, I had made him ample amends by giving him the friendship of the present preacher of Lincoln's Inn.' His sincerity made him acknowledge the greatness of the benefit; but his politeness made him insist upon it 'that it was not a debt which he had received at my hands, but a free gift.' Let it be what it will, I only wish he may show the world he knows the value of it. This I know, that his father, amidst all his acquaintance, chose the most *barren* and *sapless*—on which *dry plants* to shower down his more *refreshing rain*, as Chapman very sensibly called it."*

These two worthy divines certainly valued the friendship of Charles Yorke on account of his personal good qualities, but likewise on account of the rich church patronage which they believed would belong to him, for they confidently expected that he would one day hold the Great Seal like his father, and by heaping preferment upon them, make a better use of it.

Charles Yorke's last appearance at the bar in the Douglas cause.

Charles Yorke's last great appearance before the public as an advocate, was at the bar of the House of Lords, in the famous Douglas cause; when, along with Wedderburn, he strenuously, though unsuccessfully strove to support the judgment of the Court of Session, which had been pronounced against the legitimacy of the claimant.

Horace Walpole, ever eager to disparage all who bore his name, giving an account of this trial in his "Memoirs of George III.," says: "Mr. Charles Yorke was the least admired. The Duchess of Douglas thought she had retained him; but, hearing he was gone over to the other side, sent for him, and questioned him home. He could not deny that he had engaged himself for the House of Hamilton. 'Then, Sir,' said she, 'in the next world whose will you be, for we have all had you?'"† But there can be no doubt, that in

* Warb. Corr. 432.

† Vol. iii. 302.

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pleading for the respondent, he acted according to the rules of professional etiquette and of honour; and that he displayed ability and eloquence not surpassed by any who joined in the noble strife.

After the judgment of reversal, he very handsomely came forward to vindicate Andrew Stewart, the Duke of Hamilton's agent in conducting the cause, from the aspersions cast upon him by Lord Mansfield and Lord Camden. Thus he wrote to him, intending that the letter should be made public: "Let me beg of you one thing as a friend — not to be too anxious, nor feel too much because things impertinent or injurious are said of yourself. Can any man exert his talents and industry in public or private business without staking his good name upon it? or at least exposing himself to the jealousy of contending parties, and even to their malice and detraction?"—"All who study the cause must be convinced of the purity of your intentions, and the integrity and honour of your conduct."—"The sincere opinion of a friend declared on such occasions so trying and important, is the genuine consolation of an honest mind. In such causes, an advocate is unworthy of his profession who does not plead with the veracity of a witness and a Judge."

Whether in or out of office — while Charles Yorke maintained the independence of the bar, he behaved with great courtesy to the Judges before whom he practised: — "It was impossible," says George Hardinge, "to conceive any deportment more graceful in good manners for the bench than Mr. Yorke's towards Lord Camden, as long as the latter held the Seals, — and these attentions were mutual. Indeed the Court and the Bar were upon terms of the most amiable intercourse imaginable." *

Course of the Whigs, and prospect of a Whig administration.

Although Charles Yorke had been professedly in opposition since the last resignation of his office of Attorney General in July, 1766, he was supposed at times to have coquetted with the ministry, but latterly he had allied himself more closely with the Rockingham Whigs. His elder brother, the second

* MS. Life of Lord Camden.

Earl of Hardwicke, was a most zealous member of that party. After Lord Chatham's resuscitation, which followed his resignation, the two sections of the Whig party were reconciled, and formed a formidable opposition to the Court, now bent on taxing America, and trampling on the liberties of the people by persisting in the perpetual disqualification of Mr. Wilkes to sit in parliament. If all the Whigs were true and steady to their engagements, the greatest hopes were entertained that the illiberal members of the cabinet might be compelled to resign; — that America might be conciliated, and that tranquillity and the constitution might be restored at home.

Tuesday, Jan. 9. 1770.

Lord Camden's rupture with the Government.

With this prospect opened the session of 1770; when Lord Chatham, having again thundered against ministerial corruption and imbecility, Lord Camden made his startling disclosure, that for years he had absented himself from the council when the most important subjects of colonial and domestic policy were debated there, because he utterly condemned the course which his colleagues were obstinately pursuing.* The total surrender of the government depended upon whether any lawyer, of decent character and abilities, could be found to succeed him. Lord Shelburne, knowing this, had declared in the House of Lords, "that the Seals would go a begging; but he hoped there would not be found in the kingdom a wretch so base and mean-spirited as to accept them on the conditions on which they must be offered."† This was in the night of Tuesday, the 9th of January.

Wednesday, Jan. 10. 1770.

Resolutions of the Op-

A meeting of the opposition leaders was held next morning, when they resolved that Lord Camden should be requested to hold the Great Seal till he should be dismissed; and that all their influence should be used to prevent any

* Horace Walpole says: "The Duke of Grafton accused him of having made no objection to Lutterell's admission; his friends affirmed he had; and Lord Sandwich allowed that he had reserved to himself a liberty of acting as he pleased on every question relating to Wilkes. The Chancellor's mind certainly fluctuated between his obligations to Lord Chatham and the wish to retain his post. The Duke of Grafton's neglect determined the scale." — *Walp. Mem. Geo. III.* iv. 42.

† Horace Walpole represents that General Conway tried to prevail upon the Duke of Grafton to continue Lord Camden in office, and that the Duke "told him he was to see a person of consequence at night on that subject." "That person," said Horace to Conway, "is Charles Yorke, who is afraid of being seen going into the Duke's house by daylight." — *Memoirs of George III.* iv. 44.

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position and of the Court.

lawyer of character from agreeing to accept it. Simultaneously the King and his "friends" determined that if Lord Camden did not voluntarily resign, he should be dismissed, and that a successor to him must be found at any price. Lord Mansfield would have been the first object of their choice, but in less ticklish times he had expressed a firm purpose never to exchange his permanent office of Chief Justice of the King's Bench for the fleeting *éclat* of the Chancellorship.* The great effort to be made was to gain over Charles Yorke, whose secession would add much credit to their cause, and materially damage the Whigs. A letter was immediately written to him making an overture in very general terms, and in the evening of the following day a long interview took place between him and the Duke of Grafton. The Great Seal was now distinctly offered to him, and when he talked of his past political connections a hope was held out to him of the admission of some of his friends into the Cabinet, and of the adoption of a more liberal policy. He required time for consideration, but seemed in a humour so complying that the Duke of Grafton made a very favourable report to the King of the state of the negotiation. Charles Yorke, however, having stated what had passed to a meeting of Whigs at Lord Rockingham's, they pronounced the whole proceeding treacherous and deceitful; they foretold that, as soon as he had been inveigled to leave his party, the Court would treat him with contumely, and they prevailed upon him to give them a pledge that he would be true to them. He returned to the Premier, and declared that he positively declined the Great Seal. Being then asked if he had any objection to see the King, who had condescendingly expressed a wish to confer with him, he said he considered himself bound as a faithful subject to obey what he considered a command from his Sovereign, and he showed such alacrity in yielding to the wish, as to create a belief in the Duke's mind that he had voluntarily solicited the interview. It took place at St. James's, on Saturday the 13th of January. The particulars of the conversation are not

Object of the Court to induce Charles Yorke to become Chancellor.

Jan. 11.

His interview with the Duke of Grafton.

Thursday, Jan. 11.

The pledge given to his party.

Friday, Jan. 12.

He refuses the Great Seal.

Saturday, Jan. 13.

* Horace Walpole says: "It had been thought necessary to make Lord Mansfield the compliment of offering him the Seals;" but if this offer was then repeated, it must have been an empty form.

known, but as yet Charles Yorke remained firm, and the King, with great concern, wrote to the Duke of Grafton that he had been able to make no impression on the obstinate lawyer.

He again refuses the Great Seal.

This refusal caused great joy among the Whigs, and news of it being sent to Hayes, where Lord Chatham then was, he thus wrote: —

"Wednesday, 17th Jan. 1770.

Letter from Mr. Pitt rejoicing in his refusal.

"Mr. Yorke's refusal is of moment; and I can readily believe it, from my opinion of his prudence and discernment. No man with a grain of either would embark in a rotten vessel in the middle of a tempest, to go he knows not whither. I wish our noble and amiable Chancellor had not been so candid as to drag the Great Seal for one hour at the heels of a desperate minister, after he had hawked it about with every circumstance of indignity to the holder of it."

Lapse of Charles Yorke.

But before these characters were traced, the prudence and the virtue of Charles Yorke had been overpowered. The ministers had abandoned all hope of gaining him, and were thinking of pressing the Great Seal on Sir Eardley Wilmot or De Grey, the Attorney General*; but the King himself, without consulting them, with great dexterity and energy, made an attempt — which at first seemed crowned with brilliant success — though it terminated so fatally.

He attends the King's levée.

Tuesday, Jan. 16. His second interview with the King.

On Tuesday, the 16th of January, there was a levée at St. James's, and Charles Yorke thought it his duty to attend for the purpose of testifying his loyalty and personal respect for the Sovereign. To his great surprise he met with a very gracious reception, and the Lord in waiting informed him that his Majesty desired to see him in his closet when the

* Horace Walpole thus notices the lawyers who might have been thought of for Chancellor at this time: "Norton had all the requisites of knowledge and capacity, but wanted even the semblance of integrity, though for that reason was probably the secret wish of the Court. He was enraged at the preference given to Yorke; yet nobody dared to propose him even when Yorke had refused. Sir Eardley Wilmot had character and abilities, but wanted health. The Attorney General, De Grey, wanted health and weight, and yet asked too extravagant terms. Dunning, the Solicitor General, had taken the same part as his friends, Lord Camden and Lord Shelburne. Of Lord Mansfield there could be no question; when the post was dangerous, his cowardice was too well known to give hopes that he could be pressed to defend it." — *Mem. Geo. III.* iv. 49.

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levée was over. He hardly thought it possible that the offers to him should be repeated, but he resolutely determined at all events to be faithful to the engagements into which he had entered. Again led into temptation, he was undone. Long after he entered the King's closet he firmly, though respectfully, resisted the solicitations by which he was assailed—urging, by way of excuse, his principles, the opinions he had expressed in parliament, his party connections, and the pledge he had given to his brother. But he could not stoutly defend his reasons against a royal opponent, who naturally thought himself entitled to the services of all born under allegiance to the English crown, and who could not well appreciate objections to the performance of the duties of a subject. The King made some impression by declaring, that with such a Chancellor as he wished, an administration might soon be formed which the nation would entirely approve. At last the yielding disputant had no answer to make, when conjured to rescue his Sovereign from the degrading combination by which the throne was besieged; his virtue cooled as his loyalty was inflamed; unable longer to resist,—without making any stipulations for himself, with respect to pension or tellership,—he sank down on his knees in token of submission,—and the King, giving him his hand to kiss, hailed him as "Lord Chancellor of Great Britain."

He agrees to become Chancellor.

Tuesday, Jan. 16.

Charles Yorke, by his Majesty's command, then proceeded to the house of the Duke of Grafton, to inform him of what had happened. The minister, all astonishment, could not believe his own ears, and hurried down to St. James's,—where the King fully confirmed the news of the victory which had been won. It was then resolved that the Seal should be forthwith taken from Lord Camden, and next morning he was summoned to surrender it.—This being accordingly done, in the evening of the same day a council was held, at the Queen's House, for delivering it to the new Chancellor, and administering to him the oaths of office.

Wednesday, Jan. 17.

As he was never installed in Westminster Hall, nor ever sat in the Court of Chancery, there is no entry respecting him as Chancellor to be found in the Close Roll, or in the

records of the Crown Office; but the following minute appears in the books of the Privy Council:—

He is sworn in.

"At the Court at the Queen's House, the 17th of January, 1770,

"Present, the King's Most Excellent Majesty in Council.

"His Majesty in Council was this day graciously pleased to deliver the Great Seal to the Right Honourable Charles Yorke, Esquire, who was thereupon, by his Majesty's command, sworn of his Majesty's Most Honourable Privy Council, and likewise Lord High Chancellor of Great Britain, and accordingly took his place at the board."

At the same time a warrant was signed by the King for a patent raising him to the peerage, by the title of Baron Morden, of Morden, in the county of Cambridge.

In going home he calls at Lord Rockingham's.

As soon as the council was over, Lord Chancellor Charles Yorke, carrying away the Great Seal with him in his carriage, drove to Lord Rockingham's, to communicate to him what he had done. It so happened that Lord Rockingham, Lord Hardwicke, and the other leaders of opposition, were then holding a meeting to concert measures against the Government. He was introduced to them, and unfolded his tale. We are told that it was received with a burst of indignation, and that all present upbraided him for a breach of honour.

He instantly left them, and went home, his mind sorely harassed with the severity of their reproaches.

His sudden death.

It was announced that very evening that he was dangerously ill, and at five o'clock in the evening of Saturday the 30th of January, three days after he had been sworn in Chancellor, he was no more. His patent of nobility had been made out and was found in the room in which he died, but the Great Seal had not been affixed to it, so that the title did not descend to his heirs. He expired in the forty-eighth year of his age.

Question, Whether he committed suicide?

A suspicion of suicide immediately arose, and a controversy has ever since been maintained on the question whether that suspicion was well founded. Fortunately it is no part of my duty to give an opinion upon a subject so delicate and so painful. Would to God that I could entirely avoid it! I shall content myself with stating the authorities on both

sides, leaving the reader to draw his own conclusion. In our time, on a death so sudden occurring, a coroner's inquest would be held as a matter of course; but no coroner's inquest was held, although it would appear that the body was exhibited by order of the family to check the circulation of the rumours which were afloat.

Statement on the subject in Junius.

About three weeks after the event, there came out in the "Public Advertiser," a letter to the Duke of Grafton from JUNIUS, in which that unscrupulous writer, alluding to the dismissal of Lord Camden and the death of Charles Yorke, says: "One would think, my Lord, you might have taken this spirited resolution * before you had dissolved the last of those early connections, which once, even in your own opinion, did honour to your youth — before you would oblige Lord Granby to quit a service he was attached to — before you had discarded one Chancellor and killed another. To what an abject condition have you laboured to reduce the best of Princes, when the unhappy man who yields at last to such personal instance and solicitation as never can be fairly employed against a subject, feels himself degraded by his compliance, and is unable to survive the disgraceful honours which his gracious Sovereign had compelled him to accept. He was a man of spirit, for he had a quick sense of shame, and death has redeemed his character. I know your Grace too well to appeal to your feelings upon this event; but there is another heart, not yet, I hope, quite callous to the touch of humanity, to which it ought to be a dreadful lesson for ever."

Statement by Sir N. Wraxall.

Sir Nathaniel Wraxall, commenting on this passage, says: "The transaction to which Junius refers is one of the most tragical which has taken place in our time. Mr. Yorke closed his existence in a manner strongly resembling the last scene of the lamented ———," mentioning the name of an illustrious man, who, in a fit of mental aberration, arising from deep grief, had shortened his days.

Jeremiah Markland, on the 5th of February, 1770, thus wrote to Mr. Bowyer: —

* The Duke's own resignation.

Letter on the subject from Markland to Bowyer.

"Your letter of February 1. gave me a new and melancholy light concerning the last Chancellor who died.........! But the spirit which appears in many of our nobility, and the cession of one great wicked man, whose parts, I was afraid (and there was more reason for the fear than, I presume, was generally apprehended,) had got an entire superiority over the weakness of another, have made me very easy as to political matters. I had expressed my apprehensions in many political squibs and crackers, which I had occasionally let off; but shall now suppress them as unnecessary. The last was this:—

"*To the D. of G.*

"How strangely Providence its ways conceals!
From Pratt it takes, Yorke it takes from, the Seals:
Restore them not to Pratt, lest men should say
Thou'st done one useful thing in this thy day." *

Horace Walpole.

In Horace Walpole's "Memoirs of the Reign of George III." it is said, "After struggling with all the convulsions of ambition, interest, fear, horror, dread of abuse, and, above all, with the difficulty of refusing the object of his whole life's wishes, and with the despair of recovering the instant — if once suffered to escape — Charles Yorke, having taken three days to consider, refused to accept the Seals of Chancellor."† * * * "Mr. Conway acquainted me in the greatest secrecy that the Duke of Grafton, dismayed at Yorke's refusal of the Great Seal, would give up the administration. Not a lawyer could be found able enough, — or if able, bold enough, — or if bold, decent enough, — to fill the employment." * * * "What was my astonishment when Mr. Onslow came and told me that Yorke had accepted the Seals! He had been with the King overnight (without the knowledge of the Duke of Grafton), and had again declined; but being pressed to reconsider, and returning in the morning, the King had so overwhelmed him

* Nichols's Literary Anecdotes, vol. iv. 298.

† Horace Walpole is very inaccurate as to dates in this part of his Memoirs. For example, he represents the speeches respecting the dismissal of the Chancellor and the acceptance of the Seals by another lawyer, made in the House of Lords on the 9th of January, the first day of the Session, as made on the 15th of January, when Lord Camden was substantially dismissed, and Charles Yorke had twice refused to succeed him. — *Mem. Geo. III.* iv. 48.

with flatteries, entreaties, prayers, and at last with commands and threats of never giving him the post if not accepted now, that the poor man sank under the importunity, though he had given a solemn promise to his brother, Lord Hardwicke, and Lord Rockingham, that he would not yield. He betrayed, however, none of the rapaciousness of the times, nor exacted but one condition, the grant of which fixed his irresolution. The Chancellor must, of necessity, be a Peer, or cannot sit in the House of Lords.* The coronet was announced to Yorke, but he slighted it as of no consequence to his eldest son, who would probably succeed his uncle, Lord Hardwicke, the latter having been long married, and having only two daughters. But Mr. Yorke himself had a second wife, a very beautiful woman, and by her had another son. She, it is supposed, urged him to accept the Chancery as the King offered, or consented that the new peerage should descend to her son, and not to the eldest. The rest of his story was indeed melancholy, and his fate so rapid as to intercept the completion of his elevation. He kissed the King's hand on the Thursday†; and from Court drove to his brother, Lord Hardwicke's,—the precise steps of the tragedy have never been ascertained. Lord Rockingham was with the Earl. By some it was affirmed that both the Marquis and the Earl received the unhappy renegade with bitter reproaches. Others, whom I rather believe, maintained that the Marquis left the House directly, and that Lord Hardwicke refused to hear his brother's excuses, and, retiring from the room, shut himself into another chamber, obdurately denying Mr. Yorke an audience. At night it was whispered that the agitation of his mind, working on a most sanguine habit of body, inflamed of late by excessive indulgence both in meats and wine, had occasioned the bursting of a blood-vessel, and the attendance of surgeons was accounted for by the necessity of bleeding him four times on Friday. Certain it is, that he expired on the Saturday between four and six

* Horace is here inaccurate in his law as well as his facts.

† This, again, is a mistake, for the Great Seal had actually been delivered to him on Wednesday, the 17th of January; and it was on the evening of this same day that he drove to Lord Rockingham's.

in the evening. His servants in the first confusion had dropped too much to leave it in the family's power to stifle the truth, and though they endeavoured to colour over the catastrophe by declaring the accident natural, the want of evidence and of the testimony of surgeons to colour the tale given out, and which they never took any public means of authenticating, convinced every body that he had fallen by his own hand — whether on his sword, or by a razor, was uncertain."*

Statement by Cooksey.

Cooksey, a relation of the Hardwicke family, on the mother's side, in his "Life of Lord Hardwicke," gives an account of Lord and Lady Hardwicke's children; and, after introducing Philip, the eldest son, thus proceeds: "Being a capital supporter of the priciples and party which was headed by the amiable Marquis of Rockingham, there was no post or office in administration to which he might not have been appointed, as there were none to which his abilities would not have done honour. That body of respected and real patriots generally held their private meetings and consultations at his Lordship's house in St. James's Square; and it was at one of those that his brother appeared with the Seals which his Majesty had prevailed on him to accept, on the resignation of Lord Camden. The expressive silence with which he was received and dismissed by that illustrious assemblage of his friends, made him but too sensible of their disapprobation of his conduct. His self-condemnation of it, also, and horror of consequential shame and diminution of his high character, proved fatal to his life. His last moments gave Lord Hardwicke an occasion of expressing his nice sense of honour and refined delicacy. The Seals, and the patent creating him Baron Morden, were on a table in the apartment of the dying Chancellor. 'What hinders,' said one of his friends, 'the Great Seal being put to this patent, whilst his Lordship yet lives?' 'I forbid it!' said his noble brother. 'Never shall it be said of one of our family, that he obtained a peerage under the least suspicion of a dishonourable practice.'" The biographer then introduces

* Mem of Geo. III. iv. 48—53.

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the second son: "Charles, who after displaying the most shining abilities in the several law offices of Solicitor and Attorney General, was unhappily appointed Lord Chancellor of England on January 17. 1770; which appointment not being attended with the appprobation of his friends or his own, had such effect on his feelings as to render life insupportable. He quitted it on the 20th of the same month, to the inexpressible grief of all good men who knew him. Happily he leaves a son, heir to his virtues and the honours and great estates of his family."*

Statement by Belsham.

Belsham, in his History of the reign of George III., thus describes the last hours of Charles Yorke:—"Lord Camden, having in the course of the debate condemned, in decisive terms, the proceedings of the House of Commons, and actually divided on this occasion with Lord Chatham, was immediately compelled to relinquish the Great Seal; but such was the political consternation prevailing at this crisis, that no person competent to the office could be persuaded to accept it. Mr. Yorke, Attorney General, son of the late Lord Chancellor Hardwicke, a man of the highest professional ability, had given, as was reported and believed, a positive assurance to the Earl his brother, that he would not, upon any terms, listen to the offers of the Court; but, upon being sent for by the King and earnestly solicited, he at length, in a fatal moment, *consented*, and a patent was immediately ordered to be prepared for his elevation to the peerage, by the title of Lord Morden. On repairing to the residence of his brother, in order to explain to him the motives of his acceptance, he was *refused admission;* and in the agitation of his mind, unable to endure the torture of his own reflections, he in a few hours put an end to his existence."†

Other compilers of Memoirs and Magazines, which have been subsequently given to the world, have repeated the story, without any corroboration of it. But much weight must be given to the following very interesting extract from the MS. journal of the Duke of Grafton:—

* Cooksey, 43. † Belsham, i. 303.

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Statement in the MS. of the Duke of Grafton.

"Parliament was to meet on the 9th of January, 1770. The necessity of having a Chancellor to vindicate the law authority of the Cabinet was dinned into my ear in most companies I frequented; and it was particularly remarked that Mr. Charles Yorke had taken no part in the whole business of the Middlesex election that need preclude him from joining in opinion with the decisions of the Commons. Such insinuations were very irksome to me, and about the Court I was still more harassed with them. At last, when I was passing a few Christmas holidays at Euston, Lords Gower and Weymouth came down on a visit. They informed me that the King, on hearing their intention of going to Euston, had expressly directed them to say, that the continuation of the Lord Chancellor in his office could not be justified, and that the Government would be too much lowered by the Great Seal appearing in opposition, and his Majesty hoped that I should assent to his removal, and approve of an offer being made to Mr. Yorke. My answer, as well as I recollect, was, that 'though it did not become me to argue against his Majesty's remarks on the present peculiar state of the Great Seal, I must humbly request that I might be in no way instrumental to dismissing Lord Camden.'

Jan. 9.

"In a few days after my arrival in London the session opened, when the Lord Chancellor spoke warmly in support of Lord Chatham's opposition to the address, and while we were in the House, Lord Camden told me that he was sensible the Seal must be taken from him, though he had no intention to resign it. At St. James's it was at once decided that the Seal should be demanded: but, at my request, Lord Camden held it for some days, merely for the convenience of Government, during the negotiation for a respectable successor. No person will deny that Mr. Charles Yorke, Sir Eardley Wilmot, and Mr. De Grey would, any of them, have filled the high office of Lord Chancellor with the full approbation of Westminster Hall. They were all three thought of for it, though Sir Eardley's infirm state of health, accompanied by an humble diffidence of himself, which had been a

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distinguishing mark in his character through life, forbad the hopes of his acceptance.

"While I continued in office it was my duty as well as desire to exert myself in endeavouring to render the King's administration as respectable as I was able, though I lamented and felt grievously the loss of Lord Camden's support, from which I derived so much comfort and assistance; yet I was satisfied that the lawyers I have mentioned were men equal to discharge the duties of a Chancellor. I therefore received the King's commands to write to Mr. Yorke directly. I saw him the next day. He received the offer of the Great Seal with much gratitude to his Majesty, but hoped that he should be allowed to return his answer when he should have given it a day's consideration. Mr. Charles Yorke remained with me between two and three hours, dwelling much on the whole of his own political thoughts and conduct, together with a comment on the principal public occurrences of the present reign. When he came to make remarks on the actual state of things, after speaking with much regard of many in administration, he said that it was essential to him to be informed from me whether I was open to a negotiation for extending the administration, so as to comprehend those with whom I had formerly and he constantly wished to agree. My answer was, that he could not desire more earnestly than myself to see an administration as comprehensive as possible, and that this object could only be brought about by the union of the Whigs — adding that I should be happy to have his assistance to effect it. Mr. Yorke appeared to be pleased with this answer, and after many civilities on both sides we parted. On his return to me the next day, I found him a quite altered man, for his mind was then made up to decline the offer from his Majesty, and that so decidedly that I did not attempt to say any thing farther on the subject. He expressed, however, a wish to be allowed an audience of his Majesty. This was granted, and at the conclusion of it the King, with the utmost concern, wrote to acquaint me that Mr. Yorke had declined the Seal. On his appearing soon after at the levée, his Majesty called him into his closet immediately after it was over. What passed there I know not,

but nothing could exceed my astonishment when Lord Hillsborough came into my dressing-room in order to tell me that Mr. Yorke was in my parlour, and that he was Lord Chancellor through the persuasion of the King himself in his closet. Mr. Yorke corroborated to me what I had heard from Lord Hillsborough, and I received the same account from his Majesty as soon as I could get down to St. James's.

"Mr. Yorke staid but a little time with me, but his language gave me new hopes that an administration might shortly be produced which the nation would approve. How soon did this plausible hope vanish into a visionary expectation, only from the death of Mr. Yorke before he became Lord Morden, or we could have any preliminary discourses on the measure he earnestly desired to forward! I had long been acquainted with Mr. Yorke, and held him in high esteem. He certainly appeared less easy and communicative with me from the time of his acceptance to his death than I might expect, but it was natural to imagine that he would be more agitated than usual when arduous and intricate business was rushing at once upon him. I had not the least conception of any degree of agitation that could bring him to his sad and tragical end. Nor will I presume to conjecture what motives in his own breast, or anger in that of others, had driven him to repent of the step he had just taken. By his own appointment I went to his house about nine o'clock in the evening, two days, as I believe, after Mr. Yorke had been sworn in at a council board summoned for that purpose at the Queen's House. Being shown into his library below, I waited a longer time than I supposed Mr. Yorke would have kept me without some extraordinary cause. After above half-an-hour waiting, Dr. Watson, his physician, came into the room: he appeared somewhat confused — sat himself down for a few moments, letting me know that Mr. Yorke was much indisposed with an attack of colic. Dr. Watson soon retired, and I was ruminating on the untowardness of the circumstance — never suspecting the fatal event which had occurred, nor the still more lamentable cause ascribed for it by the world, and, as I fear, upon too just ground.

"I rung the bell and acquainted one of the servants that

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Mr. Yorke was probably too ill to see me, and that I should postpone the business on which I came to a more favourable moment. Mr. Yorke, I believe, was a religious man: It is rare to hear of such a person being guilty of an action so highly criminal. It must, therefore, have been in him a degree of passionate frenzy bearing down every atom of his reason. You will not wonder that I cannot think on the subject without horror still."

Contrary circumstances and statements.

On the other hand, it is said that besides an exposure of the body to prove that the death was natural, a detailed statement was published by the relations of the deceased, satisfactorily explaining all the circumstances which led to the suspicion; but after diligent enquiry I have not been able to procure a copy of it.

By Adolphus.

Adolphus, in his History of the Reign of George III., gives the following account of Charles Yorke's appointment and his death, without hinting at the current rumour:

"The Seal was taken from Lord Camden and offered to Mr. Yorke, who had twice filled the office of Attorney General with the greatest reputation for talents and integrity. The unsettled state of parties and the gloomy complexion of affairs naturally occasioned him to feel considerable reluctance at undertaking the office at that particular time. Nothing, probably, would have overcome his repugnance but the earnest manner in which his acceptance of the Great Seal was pressed upon him by the King himself as most essential to his service. Thus urged, Mr. Yorke determined to obey the commands of his Sovereign without reversionary conditions or stipulations. He was immediately raised to the peerage by the title of Baron Morden, of Morden, in Cambridgeshire; an honour he did not live to possess, as the patent was not completed before his death, which occurred three days after he received the Great Seal." *

But an express, and seemingly authentic, contradiction is

* Vol. i. 397. I must observe, however, that the silence of this historian, notwithstanding his good information and general accuracy, is less to be relied upon in the present instance, as he confesses that he suppressed what would be hurtful to the feelings of George III. — such as his Majesty's first attack of insanity in 1765, which rendered the Regency Bill necessary. Vol. i. 175.

Contradiction by Craddock.

given to the imputation of suicide by Craddock, a writer of credit, who, in his Memoirs, twice touches upon the subject: "Mr. Sheldon," says he, "and his brother were very rich men. Mr. S. married a relative of Mr. Charles Yorke, for a short time Lord Chancellor. Mr. Sheldon's eldest son, through the Reverend Mr. Sparrow, of Walthamstow, became intimate with me, and was frequently at my house in summer. After the dreadful death of Mr. Yorke, the newspapers more than hinted that he committed suicide, and this was mentioned at my table, not knowing Mr. Sheldon was his nephew. Mr. Sheldon replied to the gentleman, 'I pledge you my honour, my relative did not cut his throat.' When Mr. Sheldon was out of the room, the gentleman regretted that he had mentioned the circumstance, but said he was utterly astonished at Mr. Sheldon's denial. A gentleman then said, 'I believe I know the truth from Mr. Sheldon. After Mr. Charles Yorke left his Majesty, and had accepted the Seals, it was said Lord Rockingham and others expressed much resentment. Lord Rockingham, for himself, expressly denied that he said any thing. However, Mr. Charles Yorke went privately to his sideboard, and took out a bottle of some very strong liquor. He was subject to a severe stomach complaint. This liquor brought on violent sickness, and in the paroxysm he broke a blood vessel. After his death he was laid out, and the neck exposed to several persons, purposely permitted to view the corpse.' This, I rather think, was the whole truth." *

In a subsequent volume of his work, Craddock incidentally mentions "Mr. Yorke, who was afterwards, for a short time, Lord Chancellor;" and then he adds, "Having just alluded to the short life of the much-regretted Mr. Yorke after he was Lord Chancellor, I think it incumbent upon me to contradict the reported manner of his death, on the authority of one of his own family. He certainly was much agitated, after some hasty reproaches that he received on his return from having accepted the Seals, and he hastily took some strong liquor which was accidentally placed near the side-

* Crad. Mem. iv. 252.

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board, and by its occasioning great sickness, he broke a blood-vessel. The friend from whom I received the account assured me that he was present when the corpse was left openly in the chamber, that the attendants might gratify their curiosity, and see that his death could not be truly attributed to the direct means which had been so publicly and so confidently asserted." *

I must likewise observe, that in an able article on the "Life of the Honourable Charles Yorke," published in the "Law Magazine" so recently as the year 1843, the imputation is strenuously negatived, and this account is given of the event: "Stung with the coldness and reproaches of his party after his acceptance of the Great Seal, Mr. Yorke returned home in a state of extreme agitation, and drank freely of some spirits, which, in conjunction with the nervous excitement, occasioned a violent paroxysm of sickness. In the throes of his illness, he ruptured a blood-vessel."

The charitable conclusion may, therefore, be drawn that the unfortunate Charles Yorke died from the accidental bursting of a blood-vessel, and that he is only to be blamed for a want of due firmness in not adhering to his engagements.

Considerations on his conduct.

Even those who think that the testimony that he died by his own hand preponderates, must pity while they condemn him, and must still regard his memory with respect. Heaven forbid that such an act should be justified or palliated; but there is not in the annals of human error an instance of a violation of religious duty so mixed up with virtuous feelings, and so demonstrating the excess of noble qualities. His acceptance of the Great Seal was wrong, but did not proceed from sordid motives. He made no condition for pecuniary grants to himself, which, if he had asked them, would have been showered down upon him. Nor does he at all seem to have been seduced by the love of power or splendour. He quitted a strong and united party to join one that was crumbling to pieces, and if he had survived he could hardly have expected long to enjoy his elevation. He was over-

* Crad. Mem. v. 92.

powered by royal blandishments, and a momentary mistake as to the duty of a good subject. But he was soon struck with deep remorse, and his love for honest fame was demonstrated by his being unable to survive the loss of it. Many holders of the Great Seal, to obtain it, have disregarded engagements as binding, and violated principles as sacred; yet, having clutched it, have suppressed the stings of conscience and revelled in the fruits of inconsistency and treachery. Such men who live without honour, and die a natural death without repentance, may have more to answer for in the sight of a just and merciful God, than he who, in the anguish of self-reproach, sought mistakingly by a voluntary death to make atonement for the offence which he had committed.

His character.

All must join in admiring, without qualification, nearly every portion of his prior career. The brilliant promise which he gave of proficiency in early youth, he fully realised in manhood. He is not of the same calibre as Lord Bacon, Sir Thomas More, and Lord Somers; but for the combination of professional knowledge, and liberal accomplishments, he is at the very top of the second class of English lawyers. As an advocate, as a law officer of the crown, and as a member of the House of Commons, he was almost equal to his father, and if he had enjoyed the good fortune to preside for twenty years on the bench, as his father did, I make no doubt that he would have rivalled his father's fame as a magistrate. In literature, he was infinitely beyond him. I have already shown that he was a very considerable master of English prose composition,—having a style easy, elegant, and forcible,—and with much more of genuine Anglicism than we generally find at a time when the public taste was corrupted by the inversions and the measured sententiousness of Johnson.

His prose writings.

His Vers de Société.

Dabbling in poetry, his efforts, perhaps, deserve only to be denominated "Vers de Société;"—but I do not know any succeeding (as there were few preceding Chancellors) who could have equalled the following specimens of them:—

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"*Lines* (in imitation of Pope) *supposed to be addressed by a Lady deceased to the Author of a Poem in honour of her Memory.*

"Stript to the naked soul, escap'd from clay,
From doubts unfetter'd and dissolv'd in day,
Unwarm'd by vanity, unreach'd by strife,
And all my hopes and fears thrown off with life,
Why am I charm'd with friendship's fond essays,
And, though unbodied, conscious of thy praise?
Has pride a portion in the parted soul?
Does passion still the formless mind controul?
Can gratitude outpant the silent breath,
Or a friend's sorrows pierce the gloom of death?
No! 'tis a spirit's nobler taste of bliss
That feels the worth it left, in proofs like this.
Thou liv'st to crown departed friends with fame,
And, dying late, shalt all thou gav'st reclaim."

"*To a Lady, with a Present of Pope's Works.*

"The lover oft, to please some faithless dame,
With vulgar presents feeds the dying flame;
Then adds a verse, of slighted vows complains,
While she the giver and the gift disdains.
These strains no idle suit to thee commend,
On whom gay loves with chaste desires attend;
Sure had he living view'd thy tender youth,
The blush of honour and the grace of truth,
Ne'er with Belinda's charms his song had glow'd,
But from thy form the lov'd idea flow'd:
His wanton satire ne'er the sex had scorn'd
For thee, by virtue and the muse adorn'd."

"*Stanzas in the Manner of Waller, occasioned by a Receipt to make Ink given to the Author by a Lady.*

"In earliest times ere man had learn'd
His sense in writing to impart,
With inward anguish oft he burn'd,
His friend unconscious of the smart.

"Alone he pin'd in thickest shade,
Near murmuring waters sooth'd his grief,
Of senseless rocks companions made,
And from their echoes sought relief.

"Cadmus, 'tis said, did first reveal
How letters should the mind express,
And taught to grave with pointed steel
On waxen tables its distress.

"Soon was the feeble waxen trace
Supplied by ink's unfading spot,
Which to remotest climes conveys
In clearest marks the secret thought.

"Blest be his chemic hand that gave
The world to know so great a good;
Hard that his name it should not save
Who first pour'd forth the sable flood.

"'Tis this consigns to endless praise
The hero's valour, statesman's art,
Historic truth and fabling lays,
The maiden's eyes, the lover's heart.

"This kindly spares the modest tongue
To speak aloud the pleasing pain;
Aided by this, in tuneful song,
Fond vows the virgin paper stain." *

His habits.

Charles Yorke was a member of the Royal Society, but though distinguished in literature, I do not believe that he ever showed any taste for science. He always continued to delight in the society of men of letters, and was desirous of serving them. Hurd was indebted to him for promotion, as well as Warburton. He did not waste his time in field sports and frivolous amusements. All the leisure he could find from professional and political occupations, he allotted to intellectual pursuits and enjoyments.

His person.

Although Horace Walpole spitefully says, "Yorke was very ugly while he lived,"—according to his portraits, the likeness of him on his tomb, and a figure of him in wax, still preserved, his countenance was intellectual and pleasing. Though his features were plain, his smile is said to have been soft and captivating, and his eye and mouth, in particular, indicated to a physiognomist his high mental qualities. He must have had much goodness of heart, for a numerous body of friends were very warmly attached to him. His untimely end caused a tremendous sensation in the metropolis, and political opponents joined in deeply deploring it. George Hardinge says,—"I saw Lord Camden just after Mr. Yorke's death, and I never in my life observed him so melancholy as that event made him. All their competitions and jealousies were at an end, and he lamented him in tears, and spoke of him with undissembled esteem." †

I should have mentioned, that his remains were interred in the parish church at Wimple, where there is erected a splendid monument to him by Schremaker, bearing an inscription,—which, after stating his birth and earlier promotions, thus proceeds:

His epitaph.

"The Great Seal was delivered to him, January 17th, 1770, at a juncture very unfavourable for his accepting it. He died, after a short illness, on the 20th of that month. He possessed uncommon Endowments, natural and ac-

* See also "Ode to the Honourable Miss Yorke, on her copying a Portrait of Dante;" Cooksey's Life of Lord Hardwicke, 35.; Annual Register, 1770.

† MS. Life of Lord Camden.

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quired; was a complete Master of his own Profession, as practised in both parts of the United Kingdom; had an extensive knowledge of Polite Literature, and understood with accuracy the Modern as well as Antient Languages. His Style in Composition and Speaking was nervous, elegant and clear, and his Invention and Learning often furnished him with arguments which had escaped the Ingenuity of others. He was heard with attention and conviction, both in the Senate and at the Bar. His Mind was of a humane and liberal turn; and both in his public and private Station, he always acted upon Principles of Virtue and Honour. With these Talents and Qualities, we justly lament that the Public was deprived of his Abilities at a juncture when they might have been of the greatest use, and the Crown of his Service in a Station to which he had been long destined, and which he would have eminently adorned.

"This Monument is erected to his Memory by his most affectionate and afflicted Brother, PHILIP Earl of HARDWICKE."

Considering that these are the sentiments of one who had so loved him from infancy, and so deeply lamented the close of his career, they are most solemn and affecting.

General respect for his memory.

Charles Yorke, from his life and from his death, will always be interesting in English history. "His moral and intellectual worth, literary merits, legal renown, and more than all these, his gentle goodness and attaching qualities of heart, shed a calm and placid light, even at this interval of time, over his memory, like the pure ray of some distant star, which the mists, raised by earth, have for a time obscured from our view."*

His descendants.

The Great Seal, not having been put to the patent for creating him Baron Morden before he expired, this peerage only reminds his descendants of the additional honours they might have acquired. His eldest son, soon after coming of age, represented the county of Cambridge in parliament, till the death of his uncle, the second Earl of Hardwicke, in 1790, when he succeeded to all the honours and estates of the family, which he has transmitted to his son, the present worthy representative of Lord Chancellor Hardwicke and Lord Chancellor Charles Yorke.†

* Law Mag. No. lxi. 95.

† Ante, p. 173.; Grandeur of Law, 66. There is a laboured panegyric on the subject of this memoir, which, coming from a very eminent lawyer who had frequently heard him plead at the bar, possesses sufficient interest to justify me in copying it in a note, although it be written in a turgid and almost bombastic style: "That modern constellation of English jurisprudence, that elegant and accomplished ornament of Westminster Hall in the present century (1792), the Honourable Charles Yorke, Esq.; whose ordinary speeches as an advocate were profound lectures; whose digressions, from the exuberance of the best juridical knowledge, were illuminations; whose energies were oracles; whose constancy of mind was won into the pinnacle of our English forum at an inauspicious moment; whose exquisiteness of sensibility at almost the next moment from the impressions of imputed error stormed the fort even of his cultivated reason, and

so made elevation and extinction contemporaneous! and whose prematureness of fate, notwithstanding the great contributions from the manly energies of a Northington and the vast splendour of a Camden, and notwithstanding also the accessions from the two rival luminaries which have more latterly adorned our equitable hemisphere [Thurlow and Wedderburn], cause an almost insuppliable interstice in the science of English equity. To have been selected as the friend of such a man was nearly *instar omnium* to an English lawyer. Even to be old enough to have received the impressions of Mr. Charles Yorke's character as a lawyer from the frequency of hearing his chaste, delicate, and erudite expressions in the discharge of professional duty, is some source of mental gratification." — HARGRAVE's *Preface to Hale*, p. clxxxi.

This effort of an industrious black-letter conveyancer at fine writing was thus justly satirised in "The Pursuits of Literature:"

"With HARGRAVE to the Peers approach with awe,
And sense and grammar seek in Yorke and law."

There is a disparaging character of Charles Yorke by Horace Walpole, to which, from the author's prejudices against all the Yorkes, little weight can be given: "Yorke's speeches in parliament had for some time, though not so soon as they ought, fallen into disesteem. At the bar his practice had declined from a habit of gluttony and intemperance, as I have mentioned. Yet as a lawyer his opinion had been in so high repute, that he was reported to have received 100,000 guineas in fees. In truth his chief practice had flourished while his father was not only Lord Chancellor, but a very powerful minister. Yorke's parts were by no means shining. His manner was precise, yet diffuse; and his matter more sententious than instructive. His conduct was timid, irresolute, often influenced by his profession, oftener by interest. He sacrificed his character to his ambition of the Great Seal, and his life to his repentance of having attained it."—*Mem. Geo. III.*, iv. 53.

# CHAPTER CLII.

## LIFE OF LORD CHANCELLOR BATHURST FROM HIS BIRTH TILL HE WAS MADE A PUISNE JUDGE.

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Advantages from the rise of men of mediocrity.

COMPENSATION is sometimes made for a scanty share of natural abilities by great success in the world. Thus, justice is done to the individual, while the pride of rewarded genius is tempered, and a balm is applied to the wounded self-complacency of those who have been unfortunate. For such wise purposes, Henry Bathurst, little qualified for any intellectual pursuit,—became a Member of the House of Commons, one of the twelve Judges, a Commissioner of the Great Seal, Lord Chancellor, Lord President of the Council, and an Earl,—and when he had been raised to the first magistracy in the kingdom, he retained that situation for a much longer period than More, Bacon, Clarendon, or Somers.

Wonderful elevation of Lord Chancellor Bathurst.

To his credit be it remembered, that he reached such a height without a dishonourable action. The portion of plain common sense bestowed upon him was unmixed with any vicious propensity, and his career, if it was without brilliancy, was without reproach. The proximate causes of his success may be considered harmless manners, sober habits, family interest, and the mediocrity of his parts, which, preventing envy and jealousy, made him to be regarded with favour by men in power, and to be preferred to others who might have given trouble by entertaining an independent opinion, and who might from dependants have risen into rivals. It should likewise be borne in mind that, as far as the public could observe, he performed almost decently the duties of the offices in which to the surprise of mankind he was placed,—affording a memorable example of what may be accomplished by dull discretion. *

* "Have you not observed," writes Swift to Bolingbroke,—"that there is a lower kind of discretion and regularity, which seldom fails of raising men to

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His family.

The subject of this memoir was the second son of Allen, Lord Bathurst, who acted a distinguished part in public life during four reigns, and is celebrated in prosaic verses by Pope, and in poetical prose by Burke. The family are said to have come from Germany, and to have resided at "Batters," near Luneburg, from which originally they took their name. In coming to England they had a grant of a tract of forest land in Sussex, which was at first called "Batters Hurst," and then "Bathurst." Their castle here was demolished, and they lost almost the whole of their property during the wars of the Roses, so that for some generations they fell into obscurity. But they were revived by commerce, and Sir Benjamin Bathurst, their chief in the reign of William III., rose to be Governor of the East India Company, and treasurer of the household to Princess Anne of Denmark.

His father the first Lord Bathurst.

Allen, the long-lived, — his son, — having studied at Trinity College, Cambridge, under the then Master, Dean Bathurst, his uncle, was returned to parliament, when hardly of age, for the borough of Cirencester, and became a partizan of the Tories. As a reward for his services, he was raised to the peerage, — being one of the batch of twelve, made in 1711, to support the peace of Utrecht, — who, when they were introduced into the House of Lords, were asked in legal phraseology addressed to a jury, "if they would speak by their foreman?" He continued an active debater in that House above half a century,—almost invariably in opposition to the successive Whig administrations formed under the first two princes of the House of Brunswick. But he lived to see better times, when Tory ascendency was to be restored. In 1757, he was appointed treasurer to George III., then Prince of Wales, and when that Sovereign came to the throne, although the venerable Tory Peer declined office on account of his infirmities, he had a pension granted to him of 2000*l.* a year, and he was in due time advanced to an

the highest stations in the court, the church, and the law? Did you never observe one of your clerks cutting his paper with a *blunt ivory knife?* Did you ever know the knife to fail going the true way? Whereas if he had used a *razor* or *a penknife*, he had odds against himself of spoiling a whole sheet. I have twenty times compared the notion of that *ivory implement* to those talents that thrive best at court."

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Earldom. He was spared to behold his son well stricken in years, sitting on the woolsack as Lord High Chancellor, being the only individual, except the father of Sir Thomas More, on whom such a felicity was ever conferred. But he was less distinguished as a statesman than as the intimate associate of Swift, Prior, Rowe, Congreve, Arbuthnot, Gay, Addison, and Pope,—still keeping up an intimate acquaintance with the most distinguished of the succeeding generation of men of letters.

His father's introduction to Stern.

We have an interesting relation of the manner in which he became acquainted with the author of Tristram Shandy:—"He came up to me one day," says that lively writer, "as I was at the Prince of Wales's court;—'I want to know you, Mr. Sterne, but it is fit that you should know also who it is that wishes that pleasure. You have heard of an old Lord Bathurst, of whom your Popes and Swifts have sung and spoken so much. I have lived my life with geniuses of that cast, but have survived them; and despairing ever to find their equals, it is some years since I have cleared my accounts and shut up my books, with thought of never opening them again. But you have kindled a desire in me of opening them once more before I die, which now I do; so go home and dine with me.' This nobleman, I say, is a prodigy; for at eighty-five he has all the wit and promptitude of a man of thirty; a disposition to be pleased, and a power to please others, beyond whatever I knew,—added to which, a man of learning, courtesy, and feeling."

The aged peer had indeed the most elegant tastes, and the most jovial manners,—offering a striking contrast to Henry, who was rather abstemious and sullen;—insomuch that when, after supper, the son had retired, the father would rub his hands, and say to the company, "Now that *the old gentleman* is gone to bed, let us be merry, and enjoy ourselves."

To him was inscribed Pope's epistle "On the Use of Riches," in which he is thus addressed:—

Pope's lines addressed to the first

"The sense to value riches, with the art
To enjoy them and the virtue to impart,
Not meanly, not ambitiously pursued,
Not sunk by sloth, nor rais'd by servitude;

Lord Bathurst.

To balance fortune by a just expence,
Join with economy magnificence;
With splendour charity, with plenty health;
O, teach us, BATHURST, yet unspoil'd by wealth!
That secret rare between the extremes to move
Of mad good-nature and of mean self-love."

Burke's allusion to him.

But a more striking tribute to his memory is to be found in the famous speech delivered, a few months before his death, by Burke, on Reconciliation with America.* The orator, with the imagination of a true poet, having drawn the attention of the House to the rapid growth of the colonies, and the respect with which, on account of their wealth and population, they ought to be treated, thus proceeded: "Mr. Speaker, I cannot prevail upon myself to hurry over this great consideration. It is good for us to be here. We stand where we have a vast view of what is and what is past. Clouds, indeed, and darkness rest upon the future. Let us, however, before we descend from this noble eminence, reflect that this growth of our national prosperity has happened within the short period of the life of man. It has happened within sixty-eight years. There are those alive whose memory might touch the two extremities. For instance, my Lord Bathurst might remember all the stages of the progress. He was in 1704 of an age at least to be made to comprehend such things. He was then old enough *acta parentum jam legere, et quæ sit poterit cognoscere virtus.* Suppose, sir, that the angel of this auspicious youth, foreseeing the many virtues which made him one of the most amiable, as he is one of the most fortunate men of his age, had opened to him in vision that when in the fourth generation, the third prince of the House of Brunswick had sat twelve years on the throne of that nation which (by the happy issue of moderate and healing councils) was to be made Great Britain, he should see his son, Lord Chancellor of England, turn back the current of hereditary dignity to its fountain, and raise him to an higher rank of peerage, whilst he enriched the family with a new one — If amidst these bright and happy scenes of domestic honour and prosperity,

* This speech was delivered on the 22d of March, 1775, and he died the 15th of September following.

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that angel should have drawn up the curtain and unfolded the rising glories of his country, and whilst he was gazing with admiration on the then commercial grandeur of England, the genius should point out to him a little speck, scarce visible in the mass of the national interest, a small seminal principle, rather than a formed body, and should tell him — 'Young man, there is America — which at this day serves for little more than to amuse you with stories of savage men and uncouth manners; yet shall, before you taste of death, show itself equal to the whole of that commerce which now attracts the envy of the world. Whatever England has been growing to by a progressive increase of improvement, brought in by varieties of people, by succession of civilising conquests and civilising settlements, in a series of seventeen hundred years, you shall see as much added to her by America in the course of a single life!' If this state of his country had been foretold to him, would it not require all the sanguine credulity of youth, and all the fervid glow of enthusiasm, to make him believe it? Fortunate man, he has lived to see it! Fortunate, indeed, if he lives to see nothing that shall vary the prospect, and cloud the setting of his day!"

Birth of Henry Bathurst.

But, however reluctantly,—in obedience to my duty, I must now attend to a much less interesting character, and explain in what manner the most improbable part of the vision was realised. "The auspicious youth" was married to Catherine, daughter and heiress of Sir Peter Apsley, by whom he had four sons and five daughters.* For Henry, the second son, I must bespeak, during a short space, the patience of the reader,

* He was or pretended to be rather alarmed by the fecundity of his wife. In a letter to Swift, alluding to the Dean's scheme for relieving the miseries of the Irish by fattening their children for the table, he says: "I did immediately propose it to Lady Bathurst as your advice,—particularly for her last boy, which was born the plumpest and finest thing that could be seen; but she fell into a passion, and bid me send you word that she would not follow up your direction, but that she would breed him to be a parson, and he should live upon the fat of the land; or a lawyer, and then instead of being eat himself he should devour others. You know women in a passion never mind what they say; but as she is a very reasonable woman, I have almost brought her over now to your opinion, and have convinced her, that, as matters stood, we could not possibly maintain all the nine; she does begin to think it reasonable that the youngest should raise fortunes for the eldest."

although, as he had no striking qualities, good or bad, and as he met with no remarkable vicissitudes of fortune, I cannot expect to excite in his favour the sympathy of any class of readers.

His education.

He was born on the 2d of May, in the year 1714. I know not, and I must own I have not taken much pains to ascertain at what school he was educated. He probably passed through it with little flogging and little distinction. At the usual age he went to Christ Church, Oxford,—where nothing more is known of him than that he took his degree of B.A. in 1733.

At Lincoln's Inn

Being at this time a younger brother, he was destined to the bar, and he was entered of Lincoln's Inn. The discipline there had become what it has since continued; moots and readings having fallen into desuetude, and no other means of instruction substituted for them, the only qualification for being licensed as an advocate was — eating a certain number of dinners in the Hall.

He is called to the bar.

This *curriculum* being completed by Mr. Bathurst, he was called to the bar in the year 1736. He rode the Oxford circuit and sat in the Court of King's Bench; but although he was very regular in his habits, he seems to have had little business beyond a few briefs given him by favour.

He is returned to parliament for Cirencester.

While still in his twenty-second year he was returned to serve for the family borough of Cirencester. It is said that a lawyer ought not to enter parliament till he has fair pretensions to be made Solicitor General; but I do not believe that young Bathurst's professional progress was at all impeded by his political pursuits, and without being in parliament he probably would never even have had a silk gown. He sat in the House of Commons for Cirencester, and for the county of Gloucester from 1736 to 1751, a period of fifteen years — during the whole of which he is hardly ever mentioned as having taken part in debate.

Dr. Johnson's report of his speech on the impressment of seamen.

In 1741, he is said to have opposed the bill for forcibly manning the navy. His short speech is reported, and I suspect invigorated by Dr. Johnson, for it has the true Johnsonian flow: "Sir, that this law will easily admit, in the execution of it, such abuses as will overbalance the benefits,

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may readily be proved; and it will not be consistent with that regard to the public, expected from us by those whom we represent, to enact a law which may probably become an instrument of oppression. The servant by whom I am now attended may be termed, according to the language of this bill, a sea-faring man, having been once in the West Indies; and he may, therefore, be forced from my service and dragged into a ship, by the authority of a justice of the peace, perhaps of some abandoned jobber, dignified with the commission only to influence elections, and awe those whom excises and riot acts cannot subdue. I think it, sir, not improper to declare, that I would by force oppose the execution of a law like this; that I would bar my doors and defend them; that I would call my neighbours to my assistance; and treat those who should attempt to enter, without my consent, as thieves, ruffians, and murderers." *

Though Mr. Bathurst spoke rarely, he was a constant attender in the House, and his vote might always be reckoned upon by the opponents of Sir Robert Walpole. He joined the Leicester House party, and in 1745 was made Solicitor General to the Prince of Wales, on which occasion, the rank of King's counsel was conferred upon him, and he put on a silk gown.

His other speeches in parliament.

In 1749, he opposed the grant of an indemnity to the citizens of Glasgow for the loss they had sustained in the late rebellion, contending that they ought to have made a stouter resistance to the rebels, and that such indemnities would lessen the disposition to oppose foreign or domestic enemies — and pointing out the burning of Penzance by the Spaniards, in the reign of Elizabeth, and of Teignmouth, with all the ships in its harbour by the French, in the reign of William III., when no compensation from parliament was made to the sufferers, or asked by them. † The same session he spoke upon his favourite subject, the manning of the navy, condemning the plan brought forward by ministers for that purpose. ‡ In 1750, he delivered a long oration about

* 12 Parl. Hist. 93. He is represented as having said a few words on two other occasions respecting this bill. (Ib. 105. 120.)

† 14 Parl. Hist. 527.

‡ 14 Parl. Hist. 553. 557.

the demolition of the port of Dunkirk, a favourite topic for the assailants of successive governments for half a century.*

Meanwhile he continued steadily to attend the courts in Westminster Hall, and to go the Oxford circuit, though with little encouragement.

He conducts the prosecution of Miss Blandy for the murder of her father.

Feb. 1752.

While at the bar, he was engaged in one *cause célèbre*,—the trial, at Oxford, of Miss Blandy for the murder of her father,—which he had to conduct for the Crown as the leader of the circuit. This is the most horrid parricide to be found in our criminal annals, and I hope it will remain for many generations without a parallel. Mr. Bathurst's address to the jury has been much praised for its eloquence, and as it certainly contains proof of good feeling, if not of high talent and refined taste, I have pleasure in copying the best passages of it. After making some observations upon the prosecution being carried on by order of the King, and upon the immense concourse of people assembled, he thus proceeded:—"Miss Blandy, the prisoner at the bar, a gentlewoman by birth and education, stands indicted for no less a crime than that of murder; and not only for murder, but for the murder of her own father, and for the murder of a father passionately fond of her; undertaken with the utmost deliberation; carried on with an unvaried steadiness of purpose, and at last accomplished by a frequent repetition of the baneful dose administered with her own hand. A crime so shocking in its own nature, and so aggravated in all its circumstances, as will (if she be proved to be guilty of it) justly render her infamous to the latest posterity, and make our children's children, when they read the horrid tale of this day, blush to think that such a creature ever existed in a human form. I need not, gentlemen, point out to you the heinousness of the crime of murder. You have but to consult your own breasts, and you will know it. Has a murder been committed? Who has ever beheld the ghastly corpse of the murdered innocent, weltering in its blood, and did not feel his own blood run slow and cold

His speech in opening the case to the jury.

* 14 Parl. Hist. 698.

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through all his veins? Has the murderer escaped? With what eagerness do we pursue? With what zeal do we apprehend? With what joy do we bring to justice? And when the dreadful sentence of death is pronounced upon him, every body hears it with satisfaction, and acknowledges the justice of the divine denunciation, that '*Who sheddeth man's blood, by man shall his blood be shed.*' If this, then, is the case of any common murderer, what will be thought of one who has murdered her own father? who has designedly done the greatest of all human injuries to him from whom she received the first and greatest of all human benefits? who has wickedly taken away his life to whom she stands indebted for life? who has deliberately destroyed in his old age him, by whose care and tenderness she was protected in her helpless infancy? who has impiously shut her ears against the loud voice of nature and of God which bid her 'honour her father,' and instead of honouring him has murdered him?—In shortly opening the case, that you may the better understand the evidence, although I shall rather extenuate than aggravate, I have a story to tell which, I trust, will shock the ears of all who hear me. Mr. Francis Blandy, the unfortunate deceased, was an attorney-at-law, who lived at Henley, in this county. A man of character and reputation; he had one only child—a daughter,—the darling of his soul, the comfort of his age. He took the utmost care of her education, and had the satisfaction to see his care was not ill bestowed, for she was genteel, agreeable, sprightly, sensible. His whole thoughts were bent to settle her advantageously in the world. In order to do that he made use of a pious fraud (if I may be allowed the expression), pretending he could give her 10,000*l.* for her fortune. This he did in hopes that some of the neighbouring gentlemen would pay their addresses to her; for out of regard to him she was, from her earliest youth, received into the best company; and her own behaviour made her afterwards acceptable to them. But how short-sighted is human prudence! What was intended for her promotion, proved his death and her destruction." He then went on to state the following facts:—Captain Cranstoun, an officer of the army, of a noble family in Scot-

land, but of a most profligate character, being stationed with a recruiting party at Henley,—for the sake of Miss Blandy's expected fortune, pretended to fall in love with her, and paid his addresses to her. She being soon deeply attached to him accepted his offer, but the father positively refused his consent. The lovers then resolved to poison him — and Captain Cranstoun sent Miss Blandy some Scotch pebbles with a powder to clean them, which was white arsenic. To prepare the world for what was to happen, according to the superstition of the times, they had pretended to have heard supernatural music in the house, and to have seen an apparition which foreboded his death. She first administered the poison to her father in his tea, and when it caused him exquisite anguish, and seemed to be consuming his entrails, she gave him a fresh dose of the poison in the shape of gruel, which she said would comfort and relieve him. As he was dying, the cause of his death was discovered and communicated to him. He exclaimed, "Poor love-sick girl! what will not a woman do for the man she loves!" She said, "Dear sir, banish me where you will, do with me what you please, so that you do but forgive me." He answered, "I do forgive you, but you should, my dear, have considered that I was your own father; but, oh, that that villain, who hath eat of the best and drank of the best my house could afford, should take away my life and ruin my daughter!" She then ran for the paper containing the powder, and threw it into the fire, thinking it was destroyed; but it remained unconsumed, and produced her conviction. Upon this circumstance Mr. Bathurst observed, "How evidently the hand of Providence has interposed to bring her to this day's trial, that she may suffer the consequence. For what but the hand of Providence could have preserved the paper thrown by her into the fire, and could have snatched it unburnt from the devouring flame? Good God! how wonderful are all thy ways! and how miraculously hast thou preserved this paper, to be this day produced in evidence against the prisoner, in order that she may undergo the punishment due to her crime, and be a dreadful example to all others who may be tempted in like manner to offend thy Divine Majesty!"

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His reply.

Some witnesses being called for the defence, Mr. Bathurst replied, and thus concluded: "Gentlemen, you are sworn to give a true verdict according to the evidence laid before you. If upon that evidence she appears to be innocent, in God's name let her be acquitted. But if upon that evidence she appears to be guilty, I am sure you will do justice to the public and acquit your own consciences."

Verdict and execution.

There was a verdict of guilty on the clearest proof of premeditation and design; but (to show the worthlessness of the dying declarations of criminals, and the absurdity of the practice of trying to induce them to confess,) she went out of the world with a solemn declaration which she signed and repeated at the gallows, that she had no intention of injuring her father, and that she thought the powder would make him love her and give his consent to her union with Captain Cranstoun.*

Jan. 17. 1751.

Bathurst's speech against the King.

Mr. Bathurst continued leagued in politics with those who placed all their hopes of preferment on the accession of a new Sovereign. At the commencement of the session of 1751, he opposed the address, and to recommend himself to the Prince, levelled several sarcasms at the King—sneering at the courtly language which the House was called upon to adopt:—"We must not," said he, "express our acknowledgments to his Majesty without calling them our *warmest* acknowledgments; we must not talk of his Majesty's endeavours, without calling them his *unwearied* endeavours. Thus I could go on, sir, with my remarks through the whole of this address; and all this without knowing any thing of the facts we thus so highly extol. How a minister might receive such high-flown compliments without knowledge, or how this House may think proper to express itself upon the occasion, I do not know; but I should be ashamed to express myself in such a manner to my Sovereign; nay, I should be afraid lest he should order me out of his presence for attempting to put upon him such gross flattery."†

March 20. 1751.

He goes over to the Court and is made a Puisne Judge.

Frederick soon after dying suddenly, Mr. Bathurst went over, with a number of his party, to the Court, and in consequence he was, in 1754, made by Lord Hardwicke a puisne Judge of the Court of Common Pleas.

* 18 St. Tr. 1118—1194. † 14 Parl. Hist. 805.

## CHAPTER CLIII.

CONTINUATION OF THE LIFE OF LORD BATHURST TILL HE RESIGNED THE GREAT SEAL, AND WAS MADE PRESIDENT OF THE COUNCIL.

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His qualifications and conduct as a puisne Judge.

BY reading, attendance in Court, and going the circuits, Mr. Justice Bathurst had picked up a little law without much practice: he had industriously made a sort of Digest of the rules of evidence and the points generally arising at the trial of actions*; he was quiet and bland in his manners, and he possessed a great share of discretion, which enabled him on the bench to surmount difficulties, and to keep out of scrapes. With these qualifications he made a very tolerable puisne.† When sitting alone, he ruled points of law as rarely as possible, leaving them mixed up with facts to the jury; and sitting in banc, he agreed with the Chief Justice and his brethren, or (if the Court was divided) with the Judge who was supposed to be the soundest lawyer.‡ Notwithstanding his Tory education and his attachment to the Government, he concurred in the judgment of Lord Camden for the liberation of Wilkes, and against general warrants. In a case in which it was held, that a bond in consideration of past cohabitation is good in law, he pleased the sanctimonious by enriching his judgment with quotations from the books of Exodus and Deuteronomy, to prove that "wherever it appears that the man was the seducer, a provision for the woman shall be upheld." § — The murmurs against his appointment as a political job died away, and

* This was afterwards enlarged by Mr. Justice Buller, and published under the name of Buller's Nisi Prius.

† Walter Scott used to tell a story in point. The heir apparent of a considerable family in Scotland, having been, though almost fatuous, called to the bar, and there being some talk in the servant's hall about the profession of an advocate, an old butler exclaimed, — "it canna' be a very kittle tred, for our young laird is ane."

‡ See Wilson's Common Pleas Reports.

§ Turner v. Vaughan, 2 Wils. 339.

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there was a still weaker Judge made after him to keep him in countenance.*

But although people ceased to wonder that he had been put upon the bench as a puisne Judge, no one ever dreamed of his ever going higher. — A puisne Judge he did remain for fifteen long years, when, according to our modern system, he would have been entitled to retire on a pension. But nothing can be more fantastical than the distribution of prizes in the lottery of legal promotion.

Feb. 17. 1770. Feb. 20. 1770. Difficulty of disposing of the Great Seal on the death of Charles Yorke.

The triumph at Court on the acceptance of the office of Chancellor by Charles Yorke, was turned into deep dismay by his sudden death. The Great Seal was earnestly pressed upon Sir Eardley Wilmot, Chief Justice of the Common Pleas, but he resolutely refused to accept it, partly from a dislike of politics, partly from disapprobation of the measures of the Government, and partly from considering how precarious must have been the tenure of his new office. A strong appeal was again made to Lord Mansfield, and he was implored, by consenting to be Chancellor, to rescue the King from his difficulties, and to restore vigour to the Government, so much weakened by the secession of the Marquis of Granby, the Duke of Manchester, Dunning, and all the liberals who had gone out with Lord Camden; but the wary Scot would not leave his seat in the King's Bench, which he so much adorned, and which he held for life. He advised that the Great Seal should be put into commission, and he consented to preside on the woolsack as Speaker of the House of Lords. This course was adopted.†

* When Graham was made a Judge, Law, then at the Bar, said, — "he puts Rook on a pinnacle." Rook till then had been considered very incompetent.

† The difficulty of disposing of the Great Seal at this juncture led to the resignation of the Duke of Grafton. After relating his fruitless negotiations, thus he addresses his son Lord Euston: "You will feel for me in this distressing dilemma: you will perceive that I had left nothing untried to bring the vessel to tolerable trim: and when you consider that, quitted by Lord Camden and at the same time by Lord Granby, I had no reliance in the cabinet but on General Conway only. I know you will think that, under such circumstances, I could not proceed and be of service to the King and to the country; and recollect that the hopes of co-operation with Mr. Yorke to bring about an essential addition of right principle, credit, and support, vanished of course with himself. I laid before his Majesty directly my difficulties, and observed that they were such as compelled me to retire from my office, though it would be my full desire to give all assistance to his Majesty's government." — *Journal.*

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The Great Seal in commission.

A strange selection was made of Commissioners, which could not have been by his advice, — unless, indeed (as was suggested), he wished them to be entirely under his own control — three puisne Judges, of fair character, but very moderate abilities and learning, — and almost entirely unacquainted with the practice of Courts of Equity—Sir Sidney Stafford Smythe from the Exchequer, Sir Richard Aston from the King's Bench, and last and least — the Honourable Henry Bathurst from the Common Pleas.* The profession stood aghast at this arrangement, and the anticipation of failure was exceeded by the reality.

Incompetency of the Commissioners.

The Court of Chancery had not been in such a state since Cromwell's time, when the bench there was occupied by MAJOR LISLE and COLONEL FIENNES. No one of the three Commissioners had any confidence in himself or in his colleagues. In the regular hearing of causes they got on tolerably well by a mutual agreement to hold their tongues, and to consult Lord Mansfield as to the framing of their decrees; but, on "Seal Days," when they were peppered by motions to be disposed of at the moment, they could not conceal their consternation. A single incompetent Judge sitting by himself may take advantage of the tone of the counsel addressing him, of the countenance of the by-standers, and of hints from the officers; but the difficulties of the three Lords Commissioners were multiplied by their numbers, and the conflicting devices which they adopted to conceal their ignorance.

Their decision that it is unlawful to

In one easy case, which attracted much public notice, and in which they had the good luck to be unanimous, they gained a little éclat. The bill was filed by the celebrated

* "January 23. 1770.

"Sir Sidney Stafford Smythe, Knt., — a Baron of the Exchequer,
Sir Richard Aston, Knt. — a Judge of the King's Bench,
The Hon. Henry Bathurst, — a Judge of the Common Pleas,

being by Letters Patent, dated the 21st Jany, 1770, appointed Commissioners for the Custody of the Great Seal of Great Britain, upon the 23d of the same month, came into the Court of Chancery at Westr Hall, and in open Court took the oaths of allegiance and supremacy, and also the oath of office, the same being administered by the Deputy Clerk of the Crown, — Mr. Holford, the Senior Master in Chancery present, holding the book. Which being done, Mr. Attorney General prayed that it might be recorded, which the Court ordered accordingly." — *Cr. Off. Min. B.* No. 2. Fol. 16.

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print a new play acted on the stage.

Macklin against some booksellers, who employed Mr. Guerney, the short-hand writer, for the fee of one guinea, to go to the playhouse and take down from the mouths of the actors the words of his farce, entitled, "*Love à la Mode*," lately brought out upon the stage, but never printed. The copy thus obtained they were about to publish in the "Court Miscellany, or Gentleman and Lady's Magazine," and a motion was made for an injunction to prevent them from doing so. The defendant's counsel contended, that in such a case a Court of Equity ought not to interfere, but leave the plaintiff to his remedy at law, as he had lost all property in the piece by acting it, and he had not sustained, and he could not sustain, any damage, the representation on the stage being benefited rather than injured by additional publicity. But the Lords Commissioners, without hearing a reply from the counsel for the plaintiff, held that the acting was no publication to deprive him of his remedy, and Lord Commissioner Bathurst said:— "The printing it before the author has printed it is doing him a great injury. Besides the advantage from the performance, he has another means of profit — and irremediable mischief is about to be done to his property. This is a strong case for an injunction." *Perpetual injunction ordered.**

Their improper reversal of a decree which had been pronounced in favour of Lord Chatham.

But the solemn judgments of the Lords Commissioners, although supposed to be sanctioned by the authority of Lord Mansfield, were not always approved of, and they and he were particularly censured for a reversal of the decree of the Master of the Rolls in the great case of TOTHILL *v.* PITT.† This suit arose out of the will made by Sir William Pynsent, in favour of Mr. Pitt, as a mark of the testator's sense of the patriotic services of "the Great Commoner," and involved the right to a considerable amount of personal property bequeathed to him along with the estate of Burton Pynsent. The case coming on at the Rolls before Sir Thomas Sewell, a very eminent Equity Judge, he decided in favour of Mr. Pitt — on the clear and well-established rule of law, that "where the words of a will give an express estate tail in a freehold,

* Ambler, 694.; See Murray *v.* Elleston, 5 B. & A. 737.; Morris *v.* Kelly, 1 J. & W. 656.

† Dickens, 431.

the same words applied to personality, will give the whole interest — to avoid a perpetuity which the law abhors." After this decree had been acquiesced in for six years, an appeal was brought against it before the present Lords Commissioners of the Great Seal. I am wholly at a loss to account for the reversal which they pronounced; for I utterly, and most seriously and unfeignedly, discard the notion which prevailed at the time, that they or their assessor must have been influenced by political enmity to the respondent. The reversal caused a burst of surprise, and he immediately appealed against it to the House of Lords. The Judges being summoned gave an unanimous opinion in favour of the now appellant, and with the concurrence of Lord Mansfield himself, the reversal was reversed, and the original decree was affirmed. *

Their reversal reversed.

After the learned Trio had gone on for a twelvemonth, floundering and blundering, the public dissatisfaction was so great that some change was considered necessary. What was the astonishment of Westminster Hall, and of the public, when it was announced that His Majesty had been pleased to deliver the Great Seal to the Honourable HENRY BATHURST, a Judge of the Common Pleas, as Lord Chancellor, and to raise him to the peerage, by the title of Baron Apsley of Apsley, in the county of Sussex!

The Great Seal committed to the most incompetent of them. Jan. 23. 1771.

It was thought vain again to solicit the acceptance of the Great Seal by any legal dignitary who had already acquired judicial reputation, and there were then objections to introducing into the House of Lords "the majestic sense of Thurlow, or the skilful eloquence of Wedderburn." Bathurst, from his birth and family connections, was very acceptable to the party in power; he was a man of inoffensive manners, and of undoubted honour and fidelity; and his insignificance was not disagreeable — being regarded as a guarantee that he would give no trouble in the cabinet.

Bathurst Lord Chancellor and a Peer.

His insignificance of service to him.

He was sworn in at a council at St. James's the first day of Hilary Term. Two days after he led a grand procession from his house in Dean Street to Westminster Hall,

Jan. 23. 1771. He is installed.

* Brown's Parliamentary Cases, vii. 455.

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attended by the great officers of State, and many of the nobility, and he was duly installed in the Court of Chancery.*

One incompetent Judge better than three.

His proper title in the peerage at this time was Lord Apsley, and so continued till the death of his father in 1775, when his elder brother having previously died without issue, the earldom of Bathurst descended upon him; but I shall use the freedom to denominate him Lord Bathurst from the commencement of his Chancellorship.

Lord Bathurst not so bad an Equity Judge when acting single, as was expected.

Many thought that he must now entirely break down; but, on the contrary, he got on tolerably well. The Chancery galley was less unsteady than when *three* unskilful pilots were employed at the helm. There was entire confidence placed in the new Chancellor's integrity and earnest desire to do what was right; the Attorney and Solicitor General who practised before him were desirous of supporting him, and he himself, placing just reliance on the liberality and honour of the Chancery bar, acted on the belief that there would be no gross attempt made to mislead him. In weighty cases he was in the habit of calling in the assistance of Common Law Judges, and being governed by their advice.

His candour.

He likewise leaned constantly on Sir Thomas Sewell, the Master of the Rolls—never showing any arrogance or false pretension. In one important cause, having required the inferior Judge to sit as assessor, and heard his opinion, he said, with disarming candour: "I ought to apologise for keep-

* "23d January, 1771.

"The Lords Commissioners for the custody of the Great Seal of Great Britain, having delivered the said Great Seal to the King at his palace of St. James's on Wednesday the 23d of January, 1771, his Majesty, about one o'clock the same day, delivered it to Henry Bathurst, Esqr, with the title of Lord Chancellor of Great Britain, who was thereupon, by his Majesty's command, sworn of the Privy Council and likewise Lord High Chancellor of Great Britain, and took his place at the board accordingly. And on Friday the 25th of Jany, he went in state from his house in Dean Street to Westr Hall, accompanied by Earl Gower, President of the Council, Earl of Suffolk, Lord Privy Seal, Earl of Hillsborough, one of the principal Secretaries of State, Marquess of Carnarvon, the Earls of Litchfield, Marchmont, Poulett, Strafford, the Lords Bruce and Boston, and Sir John Eardley Wilmot, Knt; where, in their presence, he took the oaths of allegiance and supremacy, and the oath of Lord High Chancellor of Great Britain, the Master of the Rolls holding the book, and the Deputy Clerk of the Crown reading the said oaths. Which being done, the Solicitor General moved that it might be recorded, and it was ordered accordingly."—*Minute Book*, No. 2. fol. 18.

ing the matter so long before the Court; at first I differed in opinion with his Honour, but he hath now convinced me, and I entirely concede to his Honour's opinion, and am first to thank him for the great trouble he hath taken on the occasion."

Still the appointment was justly complained of as resting on political convenience, without regard to the interests of the suitors. As long as Lord Bathurst held the Great Seal deep grumblings were uttered — and bitter sarcasms were levelled against him.

Sir Fletcher Norton's sarcasm on Lord Bathurst.

In all companies was repeated the saying of Sir Fletcher Norton, who when he heard of Lord Commissioner Bathurst being declared Lord High Chancellor, exclaimed, "What the three could not do is given to the most incompetent of the three!"

Lines by Sir C. H. Williams.

Sir Charles Hanbury Williams inserted the new Chancellor in the band of Tories who

> "Were curs'd and stigmatis'd by power,
> And rais'd to be expos'd."

Stories circulated to ridicule the Chancellor.

Stories were invented and circulated respecting the Chancellor, which showed the low estimation in which he was held. It was said that his Lordship, on Wilkes being elected Lord Mayor of London, had threatened, in the exercise of the royal prerogative, when the profligate patriot was presented for confirmation, to disallow the choice of the citizens, — till told that this would be Wilkes's reply: "I am fitter for my office than you are for yours, and I must call upon the King to choose another Lord Chancellor." — Again, when he got into a controversy with a soldier's widow, about a spot of ground at Hyde Park Corner, and she having filed a bill against him, he gave her a sum of money to relinquish her claim, a witty barrister was represented to have observed, "here is a suit by one old woman against another, and the Chancellor has been beaten in his own Court!"

Dr. Johnson's opinion on the fitness of Chan-

There is a passage in Boswell's Life of Johnson, which shows still more strikingly the opinion of well educated men upon this subject. The biographer having mentioned the introduction of Sir Alexander Macdonald to the Lexico-

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cellors for their office.

grapher, in the year 1772, thus proceeds: "Sir Alexander observed, that the Chancellors in England are chosen from views much inferior to the office, being chosen from temporary political views. — JOHNSON. 'Why, sir, in such a government as ours, no man is appointed to an office because he is the fittest for it, nor hardly in any other government; because there are so many connections and dependencies to be studied. A despotic prince may choose a man to an office merely because he is the fittest for it.'" Such a conversation would not have occurred during the Chancellorship of Lord Hardwicke or Lord Somers.*

Character of Lord Bathurst from a contemporary work.

I give one other testimony from a popular work published shortly before the close of Lord Bathurst's career as Chancellor: — "He travelled all the stages of the law with a rapidity that great power and interest can alone in the same degree accelerate. His professional character in his several official situations was never prominently conspicuous, till that wonderful day when he *leaped* at once into the foremost seat of the law. Every individual member of the profession stood amazed; but time, the great reconciler of strange events, conciliated matters *even here.* It was seen that the noble Earl was called upon from high authority to fill an important office, which no other could be conveniently found to occupy. Lord CAMDEN had retired without any abatement of *rooted* disgust, far beyond the reach of persuasion to remove. The great CHARLES YORKE, the unhappy victim of an unworthy sensibility, had just resigned the Seals and an inestimable life together: where could the eye of administration be directed? The rage of party ran in torrents of fire. The then Attorney and Solicitor General were at the moment thought ineligible. Perhaps, too, the noble Lord then at the head of affairs, and who was yet untried, had a policy in not forwarding transcendent abilities to obscure his own. Every such apprehension vanished upon the present appointment. This man could raise no sensation of envy as a rival, or fear as an enemy."†

* Boswell, ii. 160.

† Strictures on Eminent Lawyers, p. 76.; Ambler, from p. 696. to p. 772.; 2 Dickens, from p. 432. to p. 544.

Length of his Chancellorship.

Strange to say, he continued in the office of Lord Chancellor between seven and eight years. We have a very imperfect record of his judicial performances during this period. His reporters are *Ambler* and *Dickens*, and both together hardly give more space to the whole of his Chancellorship than is occupied by a single term of Lord Eldon or Lord Cottenham. He does not seem to have settled any point of much importance, and I can only find one case of general interest which came before him. — The widow of Philip Stanhope having sold to Dodsley, the bookseller, for 1500*l.*, "Lord Chesterfield's Letters to his Son," which were advertised for publication, the executors of Lord Chesterfield, who was lately deceased, filed a bill for an injunction. The defendant first insisted that a person to whom a letter is written, or his representatives, may publish it without, or against the consent of the writer or his representatives, and then tried to make out that at any rate in this case the late Lord Chesterfield, having recovered back some papers which he wished to burn, had expressly given permission to Mrs. Stanhope to make what use she pleased of those letters written by him to her late husband, after she had observed to him that "they would make a fine system of education if published," and that the only objection he offered was, "that there was too much Latin in them." But "the LORD CHANCELLOR was very clear that an injunction ought to be granted: That the widow had no right to print the letters without the consent of Lord Chesterfield or his executors: That she had obtained neither the one nor the other: That Lord Chesterfield, when he declined taking the letters and said she might keep them, did not mean to give her leave to print and publish them. He cited the case of Mr. Pope's letters to be published by Curl, and Lord Clarendon's Life advertised by Dr. Shebbeare." *Injunction ordered till hearing, but recommendation given to the executors to permit the publication in case they saw no objection to the work, on having a copy of it delivered to them.**

His judgments.

He grants injunction against the publication of Lord Chesterfield's Letters.

* Ambler, 737.; Thompson and others, executors of the Earl of Chesterfield, *v.* Stanhope and Dodsley.

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The letters were published accordingly, and, upon the whole, there would have been ground for lamentation if they had been suppressed. Upon them chiefly depends the literary reputation of Lord Chesterfield, and notwithstanding the noted saying of Dr. Johnson concerning the "morals" and "manners" which they teach, and although they are disfigured by passages highly exceptionable, they contain many useful observations on life, and they may be turned to good advantage in the education of youth. Our indignation against the writer is much softened by considering the characteristic faults of his son, to whom they were addressed.*

In Scotch Appeals he is assisted by Lord Mansfield.

Without able assistance, Lord Bathurst would have made sad work of the appeal business in the House of Lords. He had never been engaged in a Scotch case, and was utterly ignorant of Scotch law, so as not to know the difference of a holding *a me* from a holding *de me;* and the solemn decisions of the fifteen Judges of the Court of Session were to be reviewed by him. But Lord Mansfield, taking compassion upon his destitute condition, or influenced by a regard for the credit of the Government or the interests of justice, attended the hearing of these cases, and they were very satisfactorily disposed of.

The only very important English case which he had to

* Lest I should be supposed to give any countenance to the fashionable immorality to be found in these letters, I copy for the benefit of my young readers the epigram describing their result:—

"Vile Stanhope — Demons blush to tell —
In twice two hundred places
Has shown his son the road to hell,
Escorted by the Graces.

"But little did th' ungenerous lad
Concern himself about them;
For base, degenerate, meanly bad,
He sneak'd to hell without them."

And I will give as an antidote the touching exhortation of my countryman Burns.

"The sacred lowe o' weel-plac'd love
Luxuriantly indulge it;
But never tempt th' illicit rove,
Tho' nothing should divulge it.

"I wave the quantum of the sin,
The hazard of concealing;
*But, oh! it hardens a' within,*
*And petrifies the feeling.*"

deal with in the House of Lords was one in which he could not conveniently lean on Lord Mansfield; as it was a writ of error from a judgment of the Court of King's Bench on the grand question of literary property. But the twelve Judges were called in, and adopting the opinion of a majority of them, "that authors have now no property in their works except what the legislature confers," the Chancellor had an easy task to perform in moving a reversal. "Having declared that he was wholly unbiassed, he entered into a very minute discussion of the several citations and precedents relied upon at the bar; and, one by one, described their complexion, their origin, and their tendency; showing that they were foreign to any constructions which would support the respondents in their argument. He then gave a history of the bill passed in Anne's reign for the protection of literary property, which, he said, was drawn up by the advice of Swift and Addison; and concluded with declaring, that he was clearly of opinion with the appellants." * The reversal was carried,—after a long debate, however,—several lay peers and bishops taking part in it on opposite sides.

Writ of error respecting copyright.

The only other important judicial proceeding in which Lord Bathurst was concerned is the trial of the Duchess of Kingston, before the House of Lords, for bigamy. The offence being in point of law *felony*, he was, on this occasion, created Lord High Steward, and Westminster Hall was fitted up with as much grandeur as when Charles I. was tried there before LORD PRESIDENT BRADSHAW and the "High Court of Justice,"—although, in this instance, it was known that a conviction could only lead to an admonition, "that the lady should not do the like again."

April 15. 1776. Lord Bathurst presides as High Steward on the trial of the Duchess of Kingston.

When she first appeared at the bar, and courtesied to the Peers, his Grace the Lord High Steward thus addressed her: "Madam, you stand indicted for having married a second husband, your first husband being living. A crime so destructive of the peace and happiness of private families, and so injurious in its consequences to the welfare and good order of society, that by the statute law of this kingdom it

His preliminary address to her.

* 17 Parl. Hist. 1001. 1400.

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was for many years (in your sex) punishable with death; the lenity, however, of later times has substituted a milder punishment in its stead.* This consideration must necessarily tend to lessen the perturbation of your spirits upon such an awful occasion. But that, Madam, which, next to the inward feelings of your own conscience, will afford you most comfort is, reflecting upon the honour, the wisdom, and the candour of this high court of criminal jurisdiction. It is, Madam, by your particular desire that you now stand at that bar. In your petition to the Lords, praying for a speedy trial, you assumed the title of Duchess Dowager of Kingston, and you likewise averred that Augustus John Hervey, whose wife the indictment charges you with being, is at this time Earl of Bristol. On examining the records, the Lords are satisfied of the truth of that averment, and have accordingly allowed you the privilege you petitioned for, of being tried by your peers in full Parliament; and from them you will be sure to meet with nothing but justice, tempered with humanity." †

Q. as to effect of sentence of Ecclesiastical Court?

The great question was, whether a sentence of the Ecclesiastical Court, which had been obtained, adjudging that there had been no prior marriage, was binding upon the House of Lords in this proceeding? This having been most learnedly and ably argued by Thurlow and Wedderburn on the one side, and Wallace and Dunning on the other, the Lord High Steward, by the authority of the House, submitted it to the Judges. They gave an opinion in the negative, and the trial was ordered to proceed.

Evidence.

It was then proved by the clearest evidence that the Duchess, when Miss Chudleigh and a maid of honour, had been secretly married to the Honourable Mr. Hervey, at that time a Lieutenant in the navy, now Earl of Bristol, and that they lived together some days and nights, although afterwards, repenting of what they had done, they collusively

* Formerly women were hanged for all *clergiable* felonies, however trifling, because they could not plead that they were *clerks*.

† The difficulty would be to try for bigamy a lady married to a peer, whose first alleged husband was and continues a commoner. Quacumque viâ datâ she must be acquitted, for if there was no prior marriage she is innocent; and if there was, the second marriage is void, so that she is no peeress, and the Lords have no jurisdiction.

tried to have the marriage declared null in the Ecclesiastical Court; and that she had afterwards been married to Evelyn Pierrepont, Duke of Kingston. The Lords unanimously found her guilty — one Lord adding — "erroneously, not intentionally." *Lord High Steward:* "Madam, the Lords have considered the charge and evidence brought against you, and have likewise considered of every thing which you have alleged in your defence; and upon the whole matter their Lordships have found you guilty of the felony whereof you stand indicted. What have you to allege against judgment being pronounced upon you?" She, having prayed the privilege of the peerage, to be exempt from punishment, and after argument, a resolution being passed that she was entitled to it, the Lord High Steward said to her: "Madam, the Lords have considered of the prayer you have made, and the Lords allow it. But, Madam, let me add, that although very little punishment, or none can now be inflicted, the feelings of your own conscience will supply that defect. And let me give you this information, likewise — that you can never have the like benefit a second time, but another offence of the same kind will be capital. Madam, you are discharged, paying your fees."

Verdict.

Sentence.

His Grace then broke his white wand, and dissolved the Commission. In this solemn farce, which amused the town for three days, he was allowed to have played the easy part of Lord High Steward very creditably.*

April 15, 16, 17. 1776.

Lord Chancellor Bathurst made no attempt to amend the law, or to reform the abuses of the Court of Chancery; but all notion of legal reform had disappeared during the last half of the eighteenth century; and it is a curious fact, that no general order was made by any Chancellor from Lord Hardwicke down to Lord Loughborough.†

Not a law reformer.

Lord Bathurst was a member of the cabinet which originated and carried on the most important and the most disastrous war in which this country was ever engaged — the war with our American colonies, by which the empire was dismembered; but I do not believe that he was answerable for any of the imprudent measures of Lord North's ad-

Lord Bathurst's political conduct while Chancellor.

* 20 St. Tr. 355—651. † See Beames's Orders.

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ministration, except by assenting to them. He probably took no active part in the discussions in Council respecting *conciliation* or *coercion*, and when blood began to flow, he offered no opinion respecting the manner in which the war should be conducted. Even in Parliament he very rarely spoke, except on some subject connected with the law; and unlike Lord Camden and some other lawyers, who have greatly extended their oratorical fame when placed among the Peers, he seems never to have been well listened to in either House.

He draws and defends the Royal Marriage Act.

His maiden speech as a Lord was in defence of the Royal Marriage Act, which was framed exactly as we now see it under the directions of King George III., and which, although several of his ministers disapproved of it, his Majesty was resolutely determined to carry through without any alteration, so that his family might not again be degraded by misalliances — as he thought that it had lately been. Lord Bathurst, although when Attorney General to Frederick Prince of Wales, his master being at variance with George II. he had seen great reason to doubt the asserted authority of the King respecting the marriage of his descendants, now, as Chancellor to George III., had all his doubts cleared up, and thus in answer to the Marquis of Rockingham he addressed their Lordships: "I confess, my Lords, that I had a share in drawing this bill, and I should be unworthy of the situation which I have the honour to fill if I were not prepared to justify every clause, every word, and every letter in it; and I am free to confess that I will not give my consent to any amendment whatever that may be proposed to it. Better than alter it, throw it out. But your Lordships will see its importance to the state. The King's right to the care of the royal family, and the approbation of their marriages, rests on the public good, and cannot be doubted. As to who are the royal family, all the descendents of George II. are;—and so is the Prince of Wales. They are paid out of the civil list, and therefore they are of the royal family. If any inconvenience arise, parliament will take care to remedy it a hundred years hence. The power may be abused; but so may all power. It is not against religion to annul marriages — as we know by the general Marriage Act from

March 2. 1772.

which the marriages of the royal family are excluded. The public necessity now requires that they should be regulated, and no mode would be effectual, other than that which this bill prescribes."*

Lord Bathurst gives King's consent to the election of Sir Fletcher Norton as Speaker of the House of Commons.

At the commencement of the new parliament in November, 1774, a scene was enacted which must have afforded some amusement to those who recollected Sir Fletcher Norton's biting sarcasm upon the appointment of Bathurst as Chancellor. The same Sir Fletcher Norton being elected Speaker of the House of Commons, had to appear before the same Chancellor at the bar of the House of Lords to "disqualify himself," and to pray that the Commons might be directed to make a worthier choice. However, this was not the occasion to retaliate, and the Chancellor, in expressing his Majesty's approbation of the choice of the Commons, declared that "no person in Mr. Speaker's situation ever stood less in need of apology."†

He supports the American non-intercourse Act.

In the course of the same session, the Chancellor supported the bill for cutting off the commerce of the rebellious provinces in America with the rest of the world‡, and the measure of sending Hanoverian troops to Gibraltar and Minorca, the legality of which turned on the just construction of the "Act of Settlement."§

A. D. 1777. He introduces bill to suspend the Habeas Corpus Act with respect to American prisoners.

The Americans having now declared their "*Independence*," and there being flagrant war with them, a great difficulty arose as to the treatment of prisoners taken by us in battle. We still said they were the *King's subjects* who were guilty of "levying war against him in his realm." But if so, they ought immediately to have been brought to trial for high treason, and they could not legally be detained in custody. To have treated them as *prisoners of war* would have been to acknowledge the authority of Congress as the legislature of a separate state. To have executed them as *traitors* would not only have been contrary to the rules laid down by jurists, respecting the mode of conducting a contest which assumes the aspect of civil war, but would inevitably have led to

* 17 Parl. Hist. 389.
† Ib. 32.
‡ Ib. 456.
§ Ib. 815.

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retaliation, there being many "loyalists" in the power of the "rebels." To extricate the government from this dilemma, the Chancellor brought in "A Bill to suspend the Habeas Corpus Act with respect to his Majesty's subjects taken fighting against him in America;" — whereby power was given to detain them in custody without bringing them to trial. He said, "if ever there was a bill that deserved the appellation of humanity it was this. It was certainly necessary that some punishment should be inflicted on persons taken in the act of enmity against us; but what ought it to be? Since it was plainly not expedient that they should be discharged, and not politic, from the apprehensions of retaliation, to put them to immediate death, what was the alternative? In his opinion, the only just medium had been adopted — that of preserving them till the conclusion of the war — so that their offence might still be visited upon them without endangering the lives of our fellow subjects now in a similar situation in America." * The bill passed, though strongly opposed by the Duke of Richmond and other Peers.

Question as to the legality of raising regiments.

Lord Bathurst was always desirous of getting up Lord Mansfield to defend the government, and of avoiding a personal conflict with Lord Camden; but in the session of 1778 he was driven to give his opinion in favour of the legality of a plan which ministers had adopted of allowing regiments to be raised and maintained by individuals without the authority of parliament, — contending that, although the "Bill of Rights" declared that "to keep up a standing army in time of peace was contrary to law, this not being a time of peace, the provision did not apply to it." Lord Camden was now very severe upon him, insisting "that the arguments in support of the measure from the woolsack would lead to the utter subversion of the constitution, and that to raise troops without the consent and during the sitting of parliament was not only illegal and unconstitutional, but a violation of the fundamental privileges of parliament." The subject was resumed on a subsequent day, when Lord Camden reiterated

* 19 Parl. Hist. 52. 561.

his doctrine, but the Lord Chancellor did not venture again to take the field against him. * CHAP. CLIII.

After the calamitous surrender of General Burgoyne and his army at Saratoga, the Earl of Thanet having produced in the House of Lords a letter to him from the victorious American General GATES, recommending peace between the two countries, and having moved that it should be laid upon the table, "the Lord Chancellor asked their Lordships if it could possibly be deemed right to accept a letter which held out such terms as were not only exceedingly unequal, but grossly insulting? What! acknowledge the independency of America! and withdraw our army and our fleet! Confess the superiority of America, and wait her mercy! He desired the House to consult their own feelings for an answer."† The motion, though supported by the Duke of Manchester and the Duke of Grafton, was negatived without a division.

Feb. 16. 1778. Lord Bathurst opposes the acknowledgment of American independence.

Soon after, the Chancellor showed that he could be excited by great provocation, and that, with a larger stock of moral courage to support him, he might have made a better figure in life. The Earl of Effingham, making a motion for papers respecting the public expenditure, and anticipating the rejection of it, declared "that if the proofs of the extravagant and wasteful conduct of administration were denied him there, he would take care to produce them elsewhere. The public had a right to know in what manner their money was spent, and he would furnish them with information. It was in vain, he saw plainly, to attempt in that House to move for any thing which the ministers were not willing to give. In the present instance, the first Lord of the Admiralty knew his strength in a division. He would go below the bar, and take with him his — he had like to have said — servile majority; he should not, therefore, rest satisfied, but would use proper

March 31. 1778. His indignant reply to Lord Effingham.

* 19 Parl. Hist. 625.

† Ib. 734. 742. Notwithstanding this public declaration which the Chancellor considered it his duty to make in parliament, it appears from letters which I have seen, but which I am not at liberty to make public, that on the 9th of December, 1777, he had strongly expressed his private opinion to Lord North on the necessity of opening a negotiation with the Americans for the acknowledgment of their independence, and that he had subsequently tendered his resignation because his advice was rejected. This correspondence is very creditable to Lord Bathurst, and shows that he was much respected by his colleagues.

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means to come at the truth, which he would certainly communicate to the public."

The Lord Chancellor, leaving the woolsack *in great warmth*, thus spoke: "My Lords, I feel myself called on to support the honour of the House. If such language is allowed to pass unnoticed, your Lordships will no longer be moderators between the King and the people. The noble Earl has talked of a *servile majority*; are your Lordships to be so grossly insulted without even administering a rebuke? I have sat in this House seven years, and never before heard so indecent a charge — a servile majority! The insinuation is not warrantable. I, for one, have been in the habit of voting for the measures of Government; but will any noble Lord venture to say that I am under undue influence? The Ministers of the Crown know that the place I hold is no tie upon me; they know that I always act freely according to my conscience. I was born heir to a seat in this assembly *; I enjoy a peerage by hereditary right. I could not therefore sit silent and hear the noble Earl talk of a *servile majority*. I am amazed that the members of the Government should so long have suffered themselves patiently to be traduced. In future I hope they will know how to check such a strain of invective. The ministry, my Lords, will always have a majority,—they being independent and the majority independent,—for the moment that the opposition have a majority, the ministry will be no more."† So great was the superiority of Members which the government still commanded, that Lord Effingham, to conceal the weakness of his party, suffered the motion to be negatived without a division.

* This is not strictly correct, although the peerage had been conferred upon his family three years before his birth, as he was a younger brother, till he had reached manhood. I have known a few and a very few peers who have gained distinction though born to a peerage,—the late Lord Holland, the present Lord Stanley, and others, might be held out as examples — but almost all the peers who have displayed much energy and talent in my time, have either themselves been created peers or were born before their fathers were created peers, or had begun their career as younger brothers. The *res angusta domi* is not so hard to struggle with as the enervating influence of wealth and high position without the necessity for exertion.

† 19 Parl. Hist. 995.

Lord Bathurst opposes the bill making a provision for the family of Lord Chatham.

I mention with great pain Lord Bathurst's next public exhibition, for hitherto he has appeared, if not a bright, a worthy and amiable man. After the glorious death of Chatham, which caused such public enthusiasm, and extinguished all enmity against him in almost every bosom,— insomuch that King George III. himself professed to be friendly to the making of some provision for his family,— when the bill for this purpose, which passed with much applause through the Commons, came up to the Lords, the Lord Chancellor (I am afraid from an illaudable desire to please the Court) did his best to throw it out, and opposed it in a most unfair manner, by pretending that, although purely a money bill, it might be properly amended by their Lordships. "The deceased Earl's services," said he, "when actually minister, I will not depreciate: but they were sufficiently rewarded. A few years after he accepted the high post of Privy Seal, with great emoluments, at a time when it was well known his bad state of health rendered it impossible for him to assist his Majesty's councils." Having drawn an invidious comparison between Lord Chatham and the Duke of Marlborough, although himself one of the ministers who had wasted so many millions in the fruitless contest with America, he meanly resorted to the cant that "this was not a proper time to be lavish of the people's money." "But," he added, "what operates powerfully with me against the bill is, that the provision is for the family of him who is supposed to have done the services. Why was not the reward given to him in his lifetime? Because the answer would have been, 'he has had reward enough already from what his Sovereign has done for him.' I never can agree, that by either rejecting or amending a money bill, we invade the privileges of the other House, for we are as much trustees for the people as the Commons. The King has assented to the bill; but, addressed as he was by the other House, he was in a great measure obliged to assent —and we cannot suppose that his Majesty will be offended by our exercising our right to reject or amend it. The grant did not spontaneously come from the Crown, as it ought to have done, and would have done, if there had been any

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ground for it. Before I conclude, I must use the freedom to declare, that I see no cause to despond because the Earl of Chatham is no more. There still remain as firm well-wishers to their country, and men as capable of doing it real service."* I have shown, in the Life of Lord Camden, the merited chastisement inflicted upon the author of this most ungracious and foolish effusion.†

June 2. 1778. His last speech as Chancellor in the House of Lords.

Lord Bathurst's last speech in the House of Lords as Chancellor, was in opposition to a motion of the Duke of Bolton, for an address to his Majesty, "to implore him that he would be graciously pleased to defer the prorogation of parliament until the present very dangerous crisis may be happily terminated." This was warmly supported by Lord Camden, who drew a most melancholy picture of the state to which the country had been reduced by the misconduct of ministers, and forcibly pointed out the necessity of a change both of measures and of men to preserve our national independence.

A failure.

The Chancellor followed, and attempted to answer him, but seems to have entirely failed, if he did not actually break down. He confined himself to some technical remarks on the mode in which parliament may be summoned at common law and by the statute, and on the inconvenience which would be felt if the two Houses were merely to adjourn,

* The Earl of Chatham is dead, but Earl Bathurst survives!!! At any rate our Chancellor thought it was fitter to imitate the King of England than the King of Scotland.

"This news was brought to Edinburgh,
Where Scotland's King did reign,
That brave Earl Douglas suddenly
Was by an arrow slain.

"O heavy news, King James did say;
Scotland can witness be,
I have not any Captain more
Of such account as he.

"Like tidings to King Henry came
Within as short a space,
That Percy of Northumberland,
Was slain in Chevy Chase.

"Now, God be with him, said our King,
Sith 'twill no better be:
I trust I have within my realm,
FIVE HUNDRED AS GOOD AS HE."

† Ante, p. 307.

instead of being prorogued. The motion was negatived by a majority of 42 to 20, but the opposition Peers being triumphant in the debate, it was thought indispensable that the Government should be strengthened in the House of Lords.

June 3. 1788. He resigns the Great Seal.

The following day the prorogation took place, and as soon as the ceremony was over, a Council was held at St. James's, when the Great Seal was surrendered by Lord Bathurst, and was delivered to Thurlow, the Attorney General, as Lord Chancellor, the Ex-chancellor being declared President of the Council.

Reasons for it.

This proceeding seems to have been very precipitate: it was not accompanied with any other changes, and I am unacquainted with its secret history. One would have expected that having tided over the session, Lord Bathurst, notwithstanding his inefficiency, would have been allowed to retain his office till after the long vacation, and till Parliament and the Court of Chancery were to meet again in November. He had not had any difference with Lord North, or any of the other ministers, and they were conscious that he had done his best to serve them. I suspect that, from the approaching war against France and Spain, and the questions which were anticipated with neutral powers, some advice was required in the cabinet upon international law, which might be given in a bolder tone, and acted upon with more confidence. It is very much to be deplored that, when the disputes with the colonies were ripening into civil war, and when sound constitutional councils might have saved the state, there sat in the cabinet one of the weakest, though one of the worthiest, of our Chancellors.

His merit in patronising Sir William Jones.

His most meritorious act while he held the Great Seal (which I have much pleasure in commemorating) — was his giving spontaneously a commissionership of bankrupts to Sir William Jones, — still, notwithstanding brilliant talents and stupendous acquirements, struggling with pecuniary difficulties. Soon after Lord Bathurst's resignation, came out the "Translation of the Orations of Isæus," dedicated to the Ex-chancellor. The dedicator, a little at a loss for topics of public commendation, dexterously takes shelter under the supposed

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modesty of his patron, and, preserving at once a character for gratitude and for sincerity, contents himself with saying: "I check myself, therefore, my Lord, with reluctance, and abstain from those topics to which the overflowing of my zeal would naturally impel me; but I cannot let slip the opportunity of informing the public who have hitherto indulgently approved and encouraged my labours, that although I have received many signal marks of friendship from a number of illustrious persons, to whose favours I can never proportion my thanks, yet your Lordship has been my greatest, my only benefactor; that, without any solicitation, or even request on my part, you gave me a substantial and permanent token of regard, which you rendered still more valuable by your obliging manner of giving it, and which has been literally the sole fruit that I have gathered from an incessant course of very painful toil."

Dedication to him of the translation of the Orations of Isæus.

Attempt to bribe the Chancellor.

While Lord Bathurst held the Great Seal, an attempt was in vain made to corrupt him by a secret offer to Lady Bathurst of three thousand guineas for the living of St. George's, Hanover Square. The offer was traced to the famous Dr. Dodd, then a King's Chaplain, and he was immediately dismissed from that situation. This Chancellor is allowed to have disposed of his church patronage very creditably, although on one occasion he incurred considerable obloquy by conferring a chaplaincy on Martin Madan, the translator of Juvenal, whose heterodox opinions and indifferent morals were then generally notorious, and who afterwards gave such serious offence to the Church by the publication of his "Thelyphthora" in favour of the doctrine of polygamy.*

* Lives of Eminent English Judges, p. 36.

# CHAPTER CLIV.

## CONCLUSION OF THE LIFE OF LORD BATHURST.

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Lord Bathurst's conduct while President of the Council.

LORD BATHURST continued President of the Council nearly four years, till the formation of Lord Rockingham's administration — when he resigned with Lord North. During this disastrous interval, although he was still a member of the cabinet, he did not take a leading part in public affairs, and he seldom opened his mouth in the House of Lords, — Thurlow, his successor, treating him with very little consideration or courtesy. In 1779 he made a speech in defence of the management of Greenwich Hospital, when he was very roughly handled by Lord Camden, but rescued by Lord Mansfield.* Soon after he came forward to resist the Duke of Richmond's motion about the Civil List Expenditure, contending that, "if a system of economy was to be adopted, it should not begin with the Crown, the splendour of which should be maintained by an ample revenue for the honour and dignity of the empire." †

March 6. 1780. His speech on dismissal of Lord Lieutenants for their votes in parliament.

In the following session, government being hard pressed upon the occasion of Lord Shelburne's motion for an address to his Majesty praying to be informed "by whose advice the Marquis of Carmarthen and the Earl of Pembroke had been dismissed from the office of Lord Lieutenant by reason of their conduct in parliament," — Lord President Bathurst declared "he could say, with truth, that after upwards of thirty years' public service, he did not know that he had ever made an enemy, or given just cause of offence, in any public character he had filled; he disapproved of removing persons from their appointments under the Crown, except for misconduct or incapacity, but he thought the present motion highly objectionable, as it went to intrench on the King's prerogative of choosing his own servants: this, like other prerogatives,

* 20 Parl. Hist. 569. † Ib. 1259.

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might be abused, but it was necessary for the public good; and there was no pretence for saying that it had been abused in the present instance, as there was nothing to distinguish the removals, which formed the subject of the present debate, from a continued stream of precedents since the Revolution down to the present day." *

Lord George Gordon's riots.

Peril of the Peers.

The Lord President was the organ of the government in the House of Lords respecting the proceedings to be taken in consequence of Lord George Gordon's riots. On the 2d of June, 1780, their Lordships, in approaching Westminster Hall, were in serious danger from the violence of the mob, and it was with the utmost difficulty, and after much ill usage, that they could force their way through Palace Yard. On their assembling in their own chamber, we are told by an eye-witness that "it is hardly possible to conceive a more grotesque appearance than the House exhibited. Some of their Lordships with their hair about their shoulders; others smothered with dirt; most of them as pale as the ghost in Hamlet, and all of them standing up in their several places, and speaking at the same instant; one Lord proposing to send for the guards; another for the justices or civil magistrates; many crying out, *Adjourn! adjourn!* while the skies resounded with huzzas, shoutings, hootings, and hissings in Palace Yard. This scene of unprecedented alarm continued above half an hour." News was then brought that Lord Boston had been dragged from his coach, and was undergoing the most cruel ill usage from the rabble, who detained him a prisoner.

Courage of Lord Bathurst.

Lord Bathurst showed great courage, and rose from the ministerial benches to implore order, and to make a regular motion,—but he could not procure a hearing. Lord Townshend offered to be one that would go in a body to the rescue of their brother peer. The Duke of Richmond, however, as a piece of pleasantry—somewhat ill-timed—suggested that if they went as a house, the mace ought to be carried before the noble and learned Lord on the woolsack, who (the Bishops being excused) should go at their head, followed by the Lord President of the Council, the next in rank who could fight.—Lord Mansfield then acting as Speaker in the absence

* 21 Parl. Hist. 225.

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of the Lord Chancellor, declared his readiness to do his duty. Just at that moment, Lord Boston entered with hair all dishevelled, and his clothes almost covered with hair powder and mud, occasioned by the ill-treatment he had experienced. After some further tumultuous discussion, Lord Bathurst moved an adjournment, which was carried. The House gradually thinned, most of the Lords having either retired to the coffee-houses, or gone off in hackney-carriages, while others walked home under favour of the dusk of the evening —leaving Lord Mansfield, in the seventy-sixth year of his age, alone and unprotected, save by the officers of the House and his own servants.

June 3. 1780. His speech on this occasion.

Next day, "Earl Bathurst called the attention of the House to the great fall from dignity which their Lordships had suffered the preceding day, in consequence of the gross insults and violence offered to many of their Lordships' persons by the rioters and unruly mob which had assembled in the streets, and not only interrupted the members of that House in their way to it, and prevented many from coming to do their duty in parliament, but had obliged others, after a compulsory adjournment, to steal away, like guilty things, to save themselves from being sacrificed to lawless fury. Their Lordships had witnessed the insults and violence offered to the persons of several of their Lordships; but others had been still greater sufferers; in particular, a right reverend Prelate (the Bishop of Lincoln) had been stopped in the street,—had been forced out of his coach,—the wheels of which were taken off,—and having sought refuge in a private house, had been followed by the mob, and had been obliged to make his escape in disguise. Before their Lordships proceeded to any other business, it behoved them to do something for the recovery of their dignity, by bringing the offenders to justice." He concluded by moving an address to his Majesty, praying "that he would give immediate directions for prosecuting in the most effectual manner, the authors, abettors, and instruments of the outrages committed yesterday in Palace Yard and places adjacent." After a debate, in which the government was severely blamed for negligence, in not taking proper measures

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to secure the peace of the metropolis, the motion was agreed to. He afterwards moved that the Judges should prepare a bill "to indemnify sheriffs and gaolers for the escape of prisoners during the late tumults," as these officers of the law were now liable for very heavy fines and punishments, without having been guilty of any negligence. The bill was brought in, and passed without opposition.*

Jan. 25. 1781. His speech against factious opposition.

Lord Bathurst's last considerable effort on the stage of public life, appears to have been one of his best. In the debate respecting the rupture with Holland, in answer to a violent attack on ministers by the Duke of Richmond, he said "that measures in support of the dignity of the Crown, the rights of Parliament, and the national safety, were arraigned in the most indecent terms, and when all other means of defeating them failed, then noble Lords predicted national ruin, which they said was brought about by ministerial corruption. This he would never allow to pass by in silence, it being evidently the language of disappointed ambition. All their Lordships who supported the Government were involved in the general accusation. Was it possible to sit in the House, day after day, without feeling the strongest emotions of well-founded indignation? The noble Lords to whom his Majesty had intrusted the direction of his affairs, were basely and unjustly vilified—their characters scandalously and indecently traduced—charged with being wicked at one time, and incapable at another, according as it corresponded with the views, or answered the purposes of their accusers—as having entered into a conspiracy against the liberties of their country, and leagued for its destruction. He had for a long series of years served his Sovereign in various capacities, and he could lay his hand upon his heart, and with truth affirm, that he had ever acted for the good of his country according to the best of his abilities; and that there was nothing the Crown had to bestow which could induce him to give a vote contrary to his conscience. He had enough to put him above the poor temptations of patronage and emolument, and he believed there was not a single noble

* 21 Parl. Hist. 672—698.

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Lord who had supported the measures asserted to be carried by the mere force of corruption, who did not act from motives equally honourable and conscientious as himself. But it was plain whence all this arose — a wicked ambition — a lust of power—a thirst after the emoluments of office—from corruption—and the worst species of corruption, for it was incurable — a corruption of the heart. Measures were opposed because they were said to be the King's measures; ministers were traduced merely because they were ministers; the object of the opposition was to storm the Government, reckless of consequences—but what grieved him more than private persecution or public accusation, the dearest interests of the country were sacrificed in the conflict. He trusted, however, that the good sense of the nation would see that such conduct flowed from party rage—the result of political despair and factious disappointment."

Retort upon him by the Duke of Richmond.

The Duke of Richmond retaliated, alluding to the time when Lord Bathurst was in opposition. "The noble and learned Lord speaks from long experience. His early struggle was tedious and mortifying — full of disappointment, and clouded with despair. No man is a better judge of the various operations of the human mind under such circumstances. So he concludes that a wicked, corroding ambition, whetted and inflamed by unavailing attempts, and ending in a state of political despair, is accompanied with malice and personal enmity, and 'that worst species of corruption — a corrupt heart.' But the noble and learned Earl is a Tory; he was then in opposition to the Whigs. Whoever opposes *his* friends, whether in or out of place, must act from factious motives and a *corrupt heart.*" Lord Bathurst did not reply, nor afterwards venture to stand forward as the champion of the Court.*

June 20. 1781. In carrying through a Government bill, he is sa-

We next find him, while carrying through a Government bill for imposing a stamp on almanacks, engaged in an altercation with Thurlow, the Chancellor, who seems always to have thought that he had a privilege to oppose the measures of every government with which he was connected, and to

* 21 Parl. Hist. 1013.

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assail any of his colleagues. The Chancellor complained bitterly of the manner in which the bill was worded, saying, that "several clauses were contradictory and unintelligible."

vagely attacked by Lord Chancellor Thurlow.

The Lord President tried to explain and defend them.

*Lord Chancellor.* "I am very sorry to say that the explanation of my noble and learned friend affords no satisfactory answer to my objections. Indeed, I am so dull of apprehension as to be unable to understand him. I do suspect, my Lords, that the framer of the first clause accidentally omitted the word 'not,' and that he really meant to forbid the doing of the very thing which is here commanded.* It appears to me a gross mistake, and I must beg your Lordships '*not*' to give your sanction to nonsense."—*Lord President.* "The proposed amendment of the noble and learned Lord on the woolsack would defeat the whole object of the bill, which is sufficiently plain to those who are willing to discover it."—The Lord Chancellor attacked other clauses, but met with no support, and Lord Bathurst succeeded in carrying his bill without any amendment.†

Fall of Lord North.

Such conflicts shook an administration now tottering to its fall. Lord North, personally, had been for some time eager to withdraw, but was prevailed upon to retain office from the King's insuperable dislike to the opposition leaders, and his threat to abandon England and the English crown rather than consent to the independence of America. At last the Government was in a minority in one House, and on a motion, of which notice had been given by Lord Shelburne, was threatened with the same fate in the other. To avert the coming storm, Lord North announced that "his Majesty's ministers were no more."

March 19. 1782. Lord Bathurst resigns.

Lord Bathurst, always downright and sincere, did not, like Thurlow, intrigue to continue in office with those to whom he had been opposed on all the most important principles on which the state was to be governed, and instantly resigned with his chief, intending now to enjoy the repose of private

* This reminds one of the proposal—for the purpose of making precept and faith square with practice,—to take "not" from the COMMANDMENTS, and to put it into the CREED.

† 22 Parl. Hist. 538—548.

life. There was yet no parliamentary allowance for Ex-chancellors, and he declined the grant of a pension. But he had been able to procure a tellership of the Exchequer and other valuable sinecures for his son.

His subsequent career.

During a few years following he occasionally attended in his place in the House of Lords, but he did not mix in the party contests which ensued, and he was never excited to offer his opinion on either side, by the animated discussions on the Peace of Paris, on the Coalition between Mr. Fox and Lord North, on Mr. Fox's India Bill, on the Regency Question, on the French Revolution, or on the commencement of the war with the French Republic, which he lived to see.

July 3. 1783. He opposes bill for relief of insolvent debtors.

He seems only to have spoken once after his retirement from office — in opposing a bill for the relief of insolvent debtors — which, according to his narrow views, he considered unjust to creditors and ruinous to trade.* But it should be recollected that such notions were then very generally entertained, and that Mr. Burke, by condemning imprisonment for debt, was so far in advance of his age, that he was considered a dangerous innovator, and on this ground chiefly lost his election for the city of Bristol.†

His death.

Lord Bathurst spent his last years entirely in the country, and after a gradual decay expired at Oakley Grove, near Cirencester, on the 6th day of August, 1794, in the eighty-sixth year of his age. His remains were interred in the family vault there, and a monument to his memory was erected in the parish church, with this simple and touching inscription, which he himself had composed:—

His funeral.

His epitaph.

"In Memory of HENRY EARL BATHURST, Son and Heir of Allen Earl Bathurst, and Dame Catherine, his Wife.

"His ambition was to render himself not unworthy of such Parents."

His character.

Although of very moderate capacity, he always acted a consistent and honourable part, and never having deserted

* 23 Parl. Hist. 1100.

† Even when I was Attorney General, and brought in a bill to abolish imprisonment for debt, I was only able to carry it as to *mesne process*, leaving cases *after judgment* for subsequent legislation.

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his principles or his party, or engaged in any unworthy intrigue to aggrandise himself—the blame cannot rest upon him that he was placed in situations for which he was incompetent.

I hope I shall not be expected to enter into any analysis of his character as a judge, as a statesman, or an orator, for in his mental qualities and accomplishments he is really not to be distinguished from the great mass of worthy men who, when alive, are only known to their families and a small circle of friends, and who are forgotten as soon as the grave has closed over them. He is praised for his temperate and regular habits, and for the dignity and politeness of his manners. In public life (as he often boasted) he made no enemies, and in private life he was universally beloved.

His descendants.

He remained a bachelor till forty, when he married a widow lady, who, in four years, died without bringing him any children. In 1759 he took for his second wife, Tryphena, daughter of Thomas Scawen, Esq., of Maidwell, in the county of Northampton, and by her (besides other issue) had a son, Henry, the third Earl, a distinguished statesman, who ably filled high offices under George III. and under George IV., both as Regent and King. The Lord Chancellor Bathurst is now represented by his grandson, Henry George, the present and fourth Earl. *

Apsley House built by Lord Bathurst.

* Grandeur of the Law, 70. I may be accused of having omitted to mention what is perhaps the most memorable act in the Life of Lord Chancellor Bathurst,—that he built Apsley House at Hyde Park Corner, now the town residence of the illustrious Duke of Wellington,—where stood the "Hercules Pillars," the inn frequented by Squire Western.

## CHAPTER CLV.

### LIFE OF LORD CHANCELLOR THURLOW FROM HIS BIRTH TILL HE WAS APPOINTED SOLICITOR GENERAL.

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The author's arrival at a class of Chancellors whom he has himself beheld.

I NOW arrive at a remarkable æra in my history of the Chancellors. I had to begin with some who "come like shadows, so depart," and who can only be dimly discovered by a few glimmering rays of antique light.

> "Ibant obscuri solâ sub nocte per umbram."

The long line that followed I have been obliged to examine through the spectacles of books.—With these eyes have I beheld the lineaments of Edward Lord Thurlow; with these ears have I heard the deep tones of his voice.

> "Largior hic campos æther et lumine vestit
> Purpureo; solemque suum, sua sidera norunt."

Thurlow in the House of Lords in the year 1801.

Thurlow had resigned the Great Seal while I was still a child residing in my native land; but when I had been entered a few days a student at Lincoln's Inn it was rumoured that, after a long absence from parliament, he was to attend in the House of Lords, to express his opinion upon the very important question, "whether a divorce bill should be passed on the petition of the wife, in a case where her husband had been guilty of incest with her sister?"—there never hitherto having been an instance of a divorce bill in England except on the petition of the husband for the adultery of the wife.

May 20. 1801. His dress and appearance.

When I was admitted below the bar, Lord Chancellor Eldon was sitting on the woolsack; but he excited comparatively little interest, and all eyes were impatiently looking round for him who had occupied it under Lord North, under Lord Rockingham, under Lord Shelburne, and under Mr. Pitt. At last there walked in, supported by a staff, a figure bent with age, dressed in an old-fashioned grey coat,—with breeches and gaiters of the same stuff—a brown scratch

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wig — tremendous white bushy eye-brows — eyes still sparkling with intelligence—dreadful "crows' feet" round them — very deep lines in his countenance — and shrivelled complexion of a sallow hue — all indicating much greater senility than was to be expected from the date of his birth as laid down in the "Peerage."

The debate was begun by his Royal Highness the Duke of Clarence, afterwards William IV., who moved the rejection of the bill, on the ground that marriage had never been dissolved in this country, and never ought to be dissolved, unless for the adultery of the wife, — which alone for ever frustrated the purposes for which marriage had been instituted.

His speech upon a divorce bill.

Lord Thurlow then rose, and the fall of a feather might have been heard in the House while he spoke. At this distance of time I retain the most lively recollection of his appearance, his manner, and his reasoning. "I have been excited by this bill," said he, "to examine the whole subject of divorce, as it has stood in all periods of time, and under all circumstances. Not only among civilised heathen nations, but by the Levitical law, and by the Gospel, a woman may be put away for adultery, and the remedy is not confined to the husband. The ecclesiastical courts in this country having only power to grant a divorce *à mensâ et thoro*, the tie of marriage can only be dissolved by the legislature; and when an application is made to us for that purpose, we ought to be governed by the circumstances of each particular case, and ask ourselves, whether the parties can properly continue to cohabit together as husband and wife? Common law and statute law are silent upon the subject, and this is the rule laid down by reason, by morality, and by religion. Why do you grant to the husband a divorce for the adultery of the wife? because he ought not to forgive her, and separation is inevitable. Where the wife cannot forgive, and separation is inevitable by reason of the crime of the husband, the wife is entitled to the like remedy. Your only objection is — mistrust of yourselves, and a doubt lest, on a future application by a wife, you should not conduct yourselves with sound discretion. Is such mistrust — is such doubt — a sufficient reason to justify a House of Parliament in

refusing to put an end to a contract, all the objects of which, by the crime of one party, are for ever defeated? By the clearest evidence, Mr. Addison since the marriage has been guilty of incest with the sister of Mrs. Addison. Reconciliation is impossible. She cannot forgive him, and return to his house, without herself being guilty of incest. Do such of your Lordships as oppose the bill for the sake of morality propose or wish that she should? Had this criminal intercourse with the sister taken place before the marriage, the Ecclesiastical Court would have set aside the marriage as incestuous and void from the beginning; and is Mrs. Addison to be in a worse situation because the incest was committed after the marriage, and under her own roof? You allow that she can never live with him again as her husband, and is she, innocent, and a model of virtue, to be condemned for his crime to spend the rest of her days in the unheard-of situation of being neither virgin, wife, nor widow? Another sufficient ground for passing the bill is, that there are children of this marriage, who, without the interference of the legislature, would be exclusively under the control of the father. Now, your Lordships must all agree that such a father as Mr. Addison has proved himself to be, is unfit to be intrusted with the education of an innocent and virtuous daughter. The illustrious Prince says truly, that there is no exact precedent for such a bill; but, my Lords, let us look less to the exact terms of precedents than to the reason on which they are founded. The adultery of the husband, while it is condemned, may be forgiven, and therefore is no sufficient reason for dissolving the marriage; but the incestuous adultery of the husband is equally fatal to the matrimonial union as the adultery of the wife, and should entitle the injured party to the same redress."

The impression which he made.

I cannot now undertake to say whether there were any *cheers*, but I well remember that Henry Cowper, the time-honoured Clerk of the House of Lords, who had sat there for half a century, came down to the bar in a fit of enthusiasm, and called out in a loud voice, "CAPITAL! CAPITAL! CAPITAL!" Lord Chancellor Eldon declared that he had made up his mind to oppose the measure, but that he was

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converted; and Ex-chancellor Lord Rosslyn confessed that the consideration which had escaped him, — of the impossibility of a reconciliation, — now induced him to vote for the bill. Having passed both Houses, it received the royal assent, and has since been followed as a precedent in two or three other cases of similar atrocity.*

*Vidi Virgilium tantùm.* I never again had an opportunity of making any personal observation of Thurlow, but this glimpse of him renders his appearance familiar to me, and I can always imagine that I see before me, and that I listen to the voice of this great imitator of GARAGANTUA.

Extravagantly high opinion of himself created by Thurlow among his contemporaries.

I was struck with awe and admiration at witnessing the scene I have feebly attempted to describe; and I found that any of Thurlow's surviving contemporaries, with whom I afterwards chanced to converse, entertained the highest opinion of what they denominated his "gigantic powers of mind." I must confess, however, that my recent study of his career and his character, has considerably lowered him in my estimation; and I have come to the conclusion that, although he certainly had a very vigorous understanding, and no inconsiderable acquirements, — the fruit of irregular application, — he imposed by his assuming manner upon the age in which he lived, — and that he affords a striking illustration of the French maxim — "on vaut ce qu'on veut valoir."

His birth.

His family.

This personage — celebrated as a prodigy by historians and poets, in the reign of George III., but whom posterity may regard as a very ordinary mortal — was born in the year 1732, at Bracon-Ash, in the county of Norfolk. His father, Thomas Thurlow, was a clergyman, and held successively the livings of Little Ashfield in Suffolk, and of Stratton St. Mary's, in Norfolk. The Chancellor himself never attempted to trace his line distinctly farther back than his grandfather, who was likewise a country parson, — although there was an eminent "*conveyancer*" whom he sometimes

* 35 Parl. Hist. 1429.; Macqueen's Practice of the House of Lords, 594. At the first public masquerade which I attended in London, which was soon after this, there was a character which professed to be LORD CHANCELLOR THURLOW — dressed in the Chancellor's robes, band, and full bottom wig. I am sorry to say that, to the amusement of the audience, he not only made loud speeches, but swore many profane oaths.

claimed as the founder of the family. He had a just contempt for the vanity of new men pretending that they are of ancient blood, and some one attempting to flatter him by trying to make out that he was descended from THURLOE, Cromwell's secretary, who was a Suffolk man: — "Sir," said he, "there were two Thurlows in that part of the country, who flourished about the same time. Thurloe the secretary, and Thurlow the carrier. I am descended from the last." * Nor could he boast of hereditary wealth, for his father's livings were very small, and there were several other children to be reared from the scanty profits of them. Yet, perhaps, his situation by birth was as favourable as any other for future eminence. Being the son of a clergyman, he escaped the discredit of being "sprung from the dregs of the people," and he had as good an education as if he had been heir to a dukedom. For his position in society, and for his daily bread, he was to depend entirely on his own exertions. † His father used to tell his sons betimes, that he could do nothing for them after he had launched them in a profession. The old gentleman would then say (aside) to a friend, "I have no fear about Ned; *he* will fight his way in the world."

His father's prognostication of his success in life.

Of Ned's early years, a few anecdotes have been handed down to us. It being known that on account of his lively parts he was destined to be a lawyer, the Reverend W. Leach, whom he was in the habit of visiting while a very young boy, said to him one day, "I shall live to see you Lord Chancellor,"—and forty years after obtained from him a stall at Norwich, and a living in Suffolk.

Early prophecy that he would be Lord Chancellor.

He received his earliest instructions under the paternal roof, and was four years at a school at Scarning under a Mr. Brett. ‡

At Scarning school.

* In the "Peerages" there is a long pedigree given, tracing him up to a family of Thurlow, of considerable antiquity in the northern part of the county of Norfolk, in which, although I doubt not it is very authentic, the "Carrier" does not appear, and with which therefore I do not trouble the reader.

† I belong to a club of "Sons of the Clergy of the Church of Scotland," of which the late Dr. Baillie, Serjeant Spankie, and Wilkie the painter, were members. The last was our great ornament. I well remember a speech of his from the chair, in which he said,—"born in the *manse*, we have all *a patent of nobility*."

‡ That very eminent Judge and elegant scholar, Mr. Baron Alderson, was educated at the same school, and remembers their great pride when he entered, that they had produced a Chancellor.

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Here, according to the fashion of the age, the boys wore wigs, and Ned Thurlow (whether as an emblem of his future greatness I know not) having a full bottom one, used to put it into his pocket when he went to play.

His verses on "Cock-throwing."

One of the amusements then encouraged at this and most other schools in England — now abolished for its cruelty — was "cock-throwing." By the kindness of the son of a schoolfellow of Thurlow*, I am enabled to lay before the reader a copy of verses written by him on one of these "gallicides." Notwithstanding the inaccuracies with which he is chargeable, he must be allowed to display in this performance the vigour of mind which afterwards distinguished him, and it is impossible not to admire his patriotic *fling* at the French, with whom we were then at war, and his well-deserved compliment to the hero of Culloden.

"GALLICIDIUM.

"Nymphham dum pulchram comitabar forte Belindam,
 — Gratia quam sequitur, quamque Cupido colit;
Qualis ubi in propriam migrat Cythereïa Cyprum,
 Propitioque agros numine Diva beat,
Cum vinum pateris profusum altaria libat,
 Ignibus atque piis mollia thura jacent —
Introii campum, quem ostendit semita, planum,
 Quo flores teneri et gramina læta virent.
Confusam mirans turbam, puerosque, senesque,
 Ignotum vulgus cerno, virosque duces.
Jam magis atque magis populi crebrescere murmur,
 Et vox audita est plurima rauca sonans.
Ut si quando Aquilo gelido bacchatus ab Arcto
 (Subversis sylvis saltibus atque vagis)
Procumbit ponto, fumantesque asperat undas,
 Horrisonoque mari littora curva ferit.
At clamore novo et magnâ perterrita turbâ,
 Nympha mihi effugiens hæc sua jussa dedit:
'I, turbâ mediâ perruptâ, ex ordine narra
 Cur spatium hoc campi tanta caterva premit.'
Dixit; et imperiis parens, caveam ipse petivi,
 Quam spatio lato deseruit populus.
Jam pede constrictus frustra volitare laborat
 Gallus, frustra alis æthera summa petit.
Adstitit ac heros, cui vim natura paravit,
 Cuique artem ludi suppeditavit amor.
Non alius plures maculavit sanguine fustes,
 Gallorumve dedit corpora plura neci.
Hic, baculum attollens, mirâ quod fecerat arte,
 Atque manu versans, talia voce refert:
'O fustis, nostros nunquam frustrata vocatus,
 Hunc gallum mitte ad littora dira Stygis.'

* Charles Frederick Barnwell, Esq., of Woburn Place.

Nec plura effatus telum contorsit, in auras
It clamor feriens sidera summa poli.
Jupiter ut quondam, mundi miseratus adusti
(Solis enim flammas sensit uterque polus,
Terraque subsidens Phaëtonti dira precata,
Neptunusque suis torridus æquoribus),
Fulmen in aurigam dextrâ libravit ab aure,
Excussitque rotis atque animâ pariter;
Sic periens oecidit, violento gallus ab ictu,
Nec crura eversum dilacerata ferunt.
Sic Galli intereant omnes! sic Anglia semper
Prostrato repetat lætior hoste domum!
Gentes audaces cum ducat Cumbrius heros,
Quo virtus jubet, et gloria celsa vocat,
Magnanimus populus victricia signa sequatur,
Et lætus repetat victor ovansque domum!" *

At Scarning Thurlow seems to have been a great pickle, as well as to have shown some talent, for he was next sent to the grammar school at Canterbury; and Southey, in his

At Canterbury school. A.D. 1746.

* The following is a translation of these verses by a very eminent *alumnus* of Scarning school:—

"COCK-THROWING AT SHROVE TIDE.

"With fair Belinda as I walk'd one day,
Round whom young Love and all the Graces stray,
— She fair as Venus, who to Cyprus yields
Her wish'd for presence, blessing all its fields,
Where ruddy wines in rich libations flow,
And fires of incense in her temples glow —
We reach'd, by devious paths, an open ground,
With grass and varied flowers enamell'd round.
There roam'd a crowd at once of men and boys,
All shouting out amain — an awful noise,
Loud as when Aquilo his legions pours,
Or Notus drowns the earth with pelting showers;
Whilst dark and darker still rush down the floods,
Prone in confusion fall the crashing woods;
Old ocean foams beneath th' astounding roar,
And billowy mountains roll and beat the shore.
Alarm'd, the Nymph at once in terror fled,
But ere she vanish'd, thus to me she said:
'Go, sir, at once, and, if you can, find out
What all this crowd and tumult is about.'
She spake — and I obey'd, — I sought the throng.
And reach'd the open central space. — Ere long
Tied by the leg a captive cock I spied,
Who oft to use (in vain) his pinions tried;
Whilst near him stood, in Nature's strength, a clown
Taught, by long use, the art of knocking down;
None e'er like him incarnadin'd with stains
So many clubs, or spoil'd so many mains.
He seiz'd a stick with wondrous skill prepar'd,
And thus address'd it as his hand he bar'd: —
'My trusty club which never fail'd me yet,
Fly swift, and let that cock his wages get.'

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Life of Cowper, on the authority of Sir Egerton Brydges, accounts for this movement by narrating that Dr. Downe, his father's friend, having a great spite against Mr. Talbot, head master of that school, with whom he had had a violent quarrel, recommended strongly that young Edward Thurlow should be sent to it,—his secret motive being that the hated pedagogue might have under his care "a daring refractory clever boy, who would be sure to torment him."* At Canterbury Thurlow remained some years. We are not told what pranks he played there, and I rather suspect that this was his period of steady application,—when he acquired the greatest share of that classical learning for which he was afterwards distinguished.†

At Caius College, Cambridge. A.D. 1748.

He was next sent to Caius College, Cambridge.‡ Here he affected the character of idleness. He was suspected of

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He spake and threw,—''Tis done,' exclaim'd the clown;
Shouted the crowd amaz'd,—'He's down, he's down.'
As when old Jove his thunderbolts uprear'd,
('Twas time) when Sol's ungovern'd son appear'd
Through heaven and panting earth his car to wheel
Till Neptune's self, half-boil'd, began to squeal,
Right on the lad's doom'd head the lightnings beat,
And he at once lost both his life and seat.
So fell the cock beneath the heavy blow,
His legs and spurs far scatter'd to and fro.
Thus may thy cocks, false recreant Gallia, fall,
And thou, Old England, then be cock of all.
Whilst Cumbria's hero still to conquest leads,
And British soldiers emulate his deeds.
Oh, may he soon recross the subject main,
And seek,—in triumph seek,—his home again!"

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* Southey's Life of Cowper, 23.

† Thurlow always spoke kindly of Talbot, but considered himself so barbarously used by Brett, that he fostered an inextinguishable hatred of him. While Attorney General, going into a bookseller's shop at Norwich, Brett followed him, and most obsequiously accosted him. Thurlow taking no notice of him, Brett said,—"Mr. Thurlow, do you not recollect me?"—*Mr. Attorney General.* "I am not bound to recollect every scoundrel who chooses to recollect me."

‡ By the kindness of the Rev. Dr. Chapman, the present Master of the College, I have been favoured with the following copy of his matriculation.

Extract from the Matriculation Book of Gonville and Caius College, Cambridge, 5th October, 1748.—"Edwardus, filius Reverendi Thomæ Thurlow, Vicarii de Tharston. in Com. Norf. natus apud Braken in eodem Com. educatus per biennium in Ædibus paternis apud Taccleston, sub Mag^ro^ Browne, dein per quadrien. in Scholâ publicâ apud Scarning, sub Mag^ro^ Brett, postremo in Scholâ publicâ Cantuariensi sub Mag^ro^ Talbot, annos natus 17, admissus est Oct. 5. Pens. Minor sub tutelâ Mag^ri^ Smith, et solvit pro ingress. 3*s.* 4*d.*"

sitting up at night to read, and in the mornings sometimes, when pretending to be wandering about in the fields, he "sported the oak *," — shutting himself up to prepare for a college examination; — but he eschewed the chapel and the lecture room, and loved to be seen lounging at the gates of his college, or loitering in coffee houses, then frequented by the under-graduates, or figuring in a nocturnal symposium, or acting as leader of the university men in the wars between "*town*" and "*gown*." His frequent breaches of academic discipline made him familiar with impositions, confinements within the college, privations of sizeings, and threats of rustication. He rather prided himself in such punishments, and, instead of producing reformation, they led to fresh offences. He was not more celebrated for his waywardness in getting into scrapes than for the talent he displayed in getting out of them; and he is reported to have often taken upon himself the blame of acts in which he had no hand for the pleasure of arguing the case, and showing his ingenuity in justifying what he was supposed to have done.

Charge against him of insulting the Dean.

At last he was summoned before the Dean of his College — a worthy man, but weak and formal — for non-attendance at chapel, and had an imposition set him — to translate a paper of the "Spectator" into Greek. He duly performed the task, taking considerable pains with it; but, instead of bringing his translation (as he well knew duty required) to the *imposer*, he intimated to him that he had delivered it to the College tutor, who had the reputation of being a good Grecian. This Mr. Dean construed into an unpardonable insult, and he ordered the delinquent, as in cases of the gravest complexion, to be summoned before the Master and Fellows of the College. The charge being made and proved, Thurlow was asked what he had to say in defence or extenuation of his conduct? "Please your Worships," said he, "no one respects Mr. Dean more than I do, and out of tenderness to him, I carried my exercise to one who could inform him whether I had obeyed his orders." This plain insinuation that the Dean was little acquainted with the Greek tongue was the more galling as being known

* Locked the outer door of his rooms.

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to be well-founded, and was considered by him an enormous aggravation of the original injury. He denounced it as a flying in the face of all authority, and foretold that the discipline of the College was at an end if they did not now proceed with the utmost severity. In conclusion, he declared that "*rustication* would only be laughed at by the offender, and that *expulsion* was the only adequate punishment."

The Dean moves for his expulsion.

There was no denying that the offence was a serious one, but considerable sympathy was felt for the young gentleman, who, although his future greatness was little dreamed of, was known to possess social good qualities, and to evince excellent abilities when he chose to exert them. In mitigation, they likewise remembered the dash of absurdity about Mr. Dean which had often made him the butt of the combination room. In particular, Smith, the tutor (afterwards head of the house), put in a good word for the culprit, and, to avoid setting a brand upon him which might ruin him for life, proposed that he should be permitted to take his name off the College books, and that no other proceedings should be taken against him. Notwithstanding the stout resistance of the Dean, this suggestion was adopted. Thurlow gratefully acquiesced, and thus left Cambridge without a degree.*

He is allowed to take his name off the College books.

Lent Term, 1751.

Notwithstanding his irregularities, there can be no doubt that he derived great benefit from his residence there. He had occasional fits of severe application, and always having a contempt for frivolity, when he seemed to be idle, he was enlarging his stock of knowledge and sharpening his intellect by conversing with men of strong sense and solid acquirements.

His generous behaviour to the Tutor of Caius.

Among the strange vicissitudes of life, it did so happen, that the refractory disciple, thus discarded from the bosom of Alma Mater, reached the highest civil dignity in the state;

* In a communication respecting Lord Chancellor Thurlow, with which I have been honoured by Dr. Chapman, the present learned Master of Caius, after stating that the traditions respecting him at Cambridge had become very faint, he says: "I have always understood that, having set at defiance all college authority, it became necessary to send him away. I have searched our records, and can find no recorded charge against him, or any sentence passed upon him; so I conclude his friends were advised to take him from College. He was admitted Oct. 5. 1748, and elected a scholar on Dr. Perse's foundation Oct. 12. 1748; this he held till Lady day, 1751, when his last stipend was paid him. I conclude, therefore, that his name was taken off our books about that time, as it does not appear in our list of scholars at Mich. 1751."

and it is pleasant to relate, that when presiding on the woolsack, he recollected the friendly interference of Dr. Smith, and caused him to be appointed Chancellor of the diocese of Lincoln.

And to the Dean.

It is even said, that he afterwards handsomely made atonement to "Mr. Dean." The story goes, that he had had an earlier quarrel with this functionary, who had interrupted him, rather sharply, with the question, "Pray, sir, do you know to whom you are speaking?" bidding him to recollect that he was in the presence of no less a person than the DEAN OF THE COLLEGE. This hint was not lost upon Thurlow, who then, and ever after, began and interlarded every sentence he addressed to him with the vocative, "MR. DEAN;" this banter being doubly galling to the assertor of the title, as he could not consistently appear to be offended by it. When the flippant youth, who had been so nearly expelled from his college, had a little while held the Great Seal, the individual who had proposed and pressed his expulsion, obeying a summons to wait upon him, the Chancellor's first salutation to him was, "Mr. Dean, how d'ye do? I am very happy to see you, Mr. Dean." "My Lord," he observed, somewhat sullenly, "I am no longer Mr. Dean." "That is as you please; and it shall not be my fault if the title does not still belong to you, for I have a deanery at my disposal, which is very much at your service, Mr. Dean." *

This generosity was very honourable to Thurlow, for (as he well knew) on his being made Chancellor, his College met to deliberate whether they should not congratulate him (according to custom) on his elevation,— when Dr. Smith, the Master, objected, saying, "that it would be an insult, under the circumstances attending his Lordship's removal from College,"— and the proposal fell to the ground.

* This anecdote, which has often appeared in print, is probably considerably embellished; but so much I know, from undoubted private authority, that the Dean's name was Goodrich; that he accepted a college living in Dorsetshire; that at the first visitation of the Bishop of Salisbury after Thurlow was Chancellor, Mr. Goodrich said to the Bishop, "I am sure I shall have some preferment from him, as I was the only fellow who dared to punish him;" and that the Bishop, having mentioned this to the Chancellor, the old Caius man exclaimed, "It is true! he is right, and a living he shall have!"

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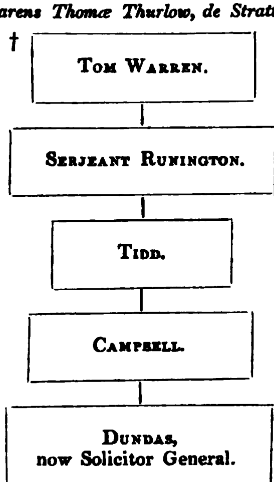
Thurlow a law student at the Temple.

His early destination for the bar remaining unaltered, he had been entered of the Inner Temple while an under-graduate at Cambridge*, and as soon as he quitted the University he took chambers, and began to keep terms by eating a certain number of dinners in the hall; this, since the disuse of "moots" and "readings," being the only *curriculum* of legal education in England.

He is placed as a pupil in a solicitor's office.

The voluntary discipline of a special pleader's office was not yet established, although Tom Warren, the great founder of the special pleading race, to whom I can trace up my pedigree, was then beginning to flourish.† The usual custom was to place the aspirant for the bar, as a pupil, in the office of a solicitor, where he was supposed to learn how actions were commenced and conducted, with the practice of the different courts of law and equity. For young Thurlow was selected the office of Mr. Chapman, a very eminent solicitor, who carried on business in Lincoln's Inn. Here he met, as a brother pupil, the celebrated William Cowper, author of the "Task." The poet contracted a great friendship for him, and introduced him to his cousin, Lady Hesketh, who lived in Southampton Row, then a fashionable quarter of the

* He is thus described: "*Edwardus Thurlow, generosus, filius et hæres apparens Thomæ Thurlow, de Stratton St. Mary, in comitatu Norfolk, Clerici.*"

†



I delight to think that my special pleading father, now turned of eighty, is still alive, and in the full enjoyment of his faculties. He lived to see four sons sitting together in the House of Lords — Lord Lyndhurst, Lord Denman, Lord Cottenham, and Lord Campbell. To the unspeakable advantage of having been three years his pupil, I chiefly ascribe my success at the bar. I have great pride in recording that when, at the end of my first year, he discovered that it would not be quite convenient for me to give him a second fee of one hundred guineas, he not only refused to take a second, but insisted on returning me the first. Of all the lawyers I have ever known, he has the finest analytical head; and if he had devoted himself to science, I am sure that he would have earned great fame as a discoverer. His disposition and his manners have made him universally beloved.

town. This gay house was much more agreeable to the taste of the brother-pupils than the smoky chambers of the attorney, smelling of musty parchment; and here they frivolously passed a great part of their time. Cowper, in a private letter written many years after, gives this account of their studies: "I did actually live three years with Mr. Chapman, that is to say, I slept three years in his house, but I lived, that is to say, I spent my days, in Southampton Row, as you very well remember. There was I and the future Lord Chancellor constantly employed, from morning till night, in giggling, and making others giggle, instead of studying the law."

Account from Cowper, his fellow-pupil, of their idleness.

Thurlow, while denominated "a student of law," affected the character of an idler.* He was fond of society; without being addicted to habitual intemperance, he occasionally indulged in deep potations; and, although his manners were somewhat rough and bearish, as he had great powers of entertainment, his company was much courted by the loungers of the Inns of Court. Thus a good deal of his time was stolen from study, and he could not lay in such stores of learning as Selden and Hale, in the preceding century, — who for years together read sixteen hours a day. But he by no means neglected preparation for his profession to the extreme degree which he pretended. He had an admirable head for the law, with a quick perception and a retentive memory; so that he made greater progress than some plodders who were at work all day long and a great part of every night. He attended the remarkable trials and arguments which came on in Westminster Hall, and picked up a good deal of legal knowledge while he seemed only to

Thurlow's habits while keeping his terms.

* This affectation, which I believe has gone out of fashion like "hair powder" and "shorts," survived to my time. I knew an exceedingly clever young man, who, having taken a high degree at Cambridge, in reality studied the law very assiduously, but who pretended to be idle, or to read only books of amusement. Reversing the practice of the hero of the PLEADER'S GUIDE, who, if "Hawke" or "Buzzard," or any attorney was approaching, conveyed the object of his affections into the coal-hole, and pretended to be reading the "*Doctrina Placitandi*," my friend, who was in the habit of poring over "Coke upon Littleton," had a contrivance by which, on a knock coming to the door, this black-letter tome disappeared, and there was substituted for it a novel, the name of which I may not mention. If he had lived he would have conquered all such follies; but he was destined to an early grave.

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be abusing the counsel and laughing at the Judges. He would still shut himself up for whole mornings, barring his outer door,— when he not only would seize upon a classic, and get up the literature of the day, but make a serious attack on Littleton and Plowden. He did go almost every evening to Nando's coffee-house, near Temple Bar, and swaggered and talked loud there about politics and scandal, new plays and favourite actresses; but if he had not taken too much of the punch which Mrs. Humphries, the landlady, was celebrated for compounding, and her fair daughter served,— on returning to his chambers he would read diligently, before going to rest, till his candles turned dim in the morning light. His contemporary, Craddock, who was admitted to his entire intimacy, and from whom he concealed nothing, writes, "It was generally supposed that Thurlow in early life was idle; but I always found him close at study in a morning, when I have called at the Temple; and he frequently went no further in an evening than to Nando's, and then only in his *déshabille*." * It is quite clear, from his successful combats with the members of the "Literary Club," and with the first lawyers in Westminster Hall, that he had effectually, though irregularly, devoted himself to literature and law. Let me, then, anxiously caution the student against being misled by the delusive hope which the supposed idleness of Thurlow has engendered, that a man may become a great lawyer, and rise with credit to the highest offices, without application. Thurlow never would have been Chancellor if he had not studied his profession, and he would have been a much greater Chancellor, and would have left a much higher name to posterity, if he had studied it more steadily.

He haunts Nando's coffee-house.

Testimony to his industry.

* Cradock's Memoirs, vol. i. 79. I presume the *déshabille* meant that he entered the coffee-house without wearing a cut velvet suit and a sword, as lawyers still did when they went into fine company. Having reached extreme old age, he told his youngest nephew (from whom I received the statement) that "when young he read much at night; and that once, while at College, having been unable to complete a particular line in a Latin poem he was composing, it rested so on his mind that he dreamed of it, completed it in his sleep, wrote it out next morning, and received many compliments on its classical and felicitous turn."

The benchers of his Society, who were supposed to direct his studies, and to examine into his proficiency, having ascertained that he had kept twelve terms by eating the requisite number of dinners in the Hall each term,—on the 22d of November, 1754, called him to the bar, vouching his sufficiency to advocate the causes of his fellow citizens in all courts, civil and criminal. He took his seat in the back rows of the Court of King's Bench, of which Sir Dudley Ryder was then Chief Justice, and he went the Western Circuit, of which Henley and Pratt were the leaders. But for several years he met with little success either in town or country. He had no family interest or connexion to assist him; his reputation for idleness repelled business from his chambers, and he was too proud to *hug* the attorneys or to try to get forward by unworthy means.

A.D. 1754. He is called to the bar.

His slow progress.

When he had been a few years at the bar he fell into pecuniary straits. His father had expected that fees would immediately flow in upon him, and proposed to withdraw, instead of increasing the very moderate allowance which was his sole support. It is even said that the future Chancellor, although he practised a laudable economy, was actually reduced to the following stratagem to procure a horse to carry him round the circuit: He went to a horse-dealer, and said to him that he wished to purchase a good roadster—price being no object to him—but that he must have a fair trial of the animal's paces before he concluded the bargain. The trial being conceded, he rode off to Winchester, and having been well carried all the way round, but still without any professional luck, he returned the horse to his owner, saying that "the animal, notwithstanding some good points, did not altogether suit him."

His pecuniary difficulties.

His stratagem to find a horse to ride the circuit.

At last, fortune smiled upon him. By some chance he had a brief in the case of *Luke Robinson* v. *the Earl of Winchelsea*, tried before Lord Mansfield, at Guildhall. The leader on the opposite side was Sir Fletcher Norton, then the tyrant of the bar, who began by treating the unknown junior with his usual arrogance. This Thurlow resented with great spirit. They got into an altercation, in which Thurlow had with him the sympathies of the bar and the

A.D. 1758. He gains distinction by putting down Sir Fletcher Norton.

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by-standers, and with a happy mixture of argument and sarcasm he completely put down his antagonist. The attorneys who had smarted much under Norton's despotic rule were exceedingly delighted, and resolved to patronise the man who had shown so much courage and capacity. *

Briefs in cases of a peculiar character did come in, and he was now known and talked of in the profession as one supposed to be possessed of great resources, and likely one day to make a figure, but still he had few constant clients, and little regular business. He had not credit for possessing much technical knowledge of the law, and he did not always exhibit that subordination which the leader expects in a junior counsel, and which indeed the interest of the client demands. In short, he disdained to "play second fiddle" to those whom he conceived inferior performers. There was no chance of his getting forward in the routine progress of professional advancement, and his friends were still under much apprehension of his ultimate failure.

He is retained in the Douglas cause.

It has often been said that he made his fortune by his great speech at the bar of the House of Lords in the Douglas cause. But this story is utterly demolished by the slightest attention to dates. The hearing of that celebrated appeal, in which he certainly gave the finest display of his forensic powers, did not come on till January, 1769; and before then he had long had a silk gown, he led his circuit, he was engaged in every important case which came on in Westminster Hall, and he had been returned to the House of Commons as member for Tamworth. However, his retainer as one of the counsel for the appellant in the Douglas cause truly had a very material and very favourable influence upon his destiny. The occurrence is said to have

* I was myself present when, under very similar circumstances, Topping at once pushed himself into great business at Guildhall, by putting down Gibbs, then Attorney General — quoting the indignant description by Cassius of the tyranny of Cæsar:

> "Why, man, he doth bestride the narrow world,
> Like a Colossus; and we petty men
> Walk under his huge legs and peep about
> To find ourselves dishonourable graves.
> The fault — is not in our stars,
> But in ourselves, that we are underlings."

happened by the purest accident. According to legal tradition, soon after the decision of the Court of Session in Scotland that the alleged son of Lady Jane Douglas was a supposititious child purchased at Paris, the question, which excited great interest all over Europe, was discussed one evening at Nando's coffee-house — from its excellent punch, and the ministrations of a younger daughter of the landlady—still Thurlow's favourite haunt. At this time, and indeed when I myself first began the study of the law, the modern club system was unknown; and (as in the time of Swift and Addison) men went in the evenings for society to coffee-houses, in which they expected to encounter a particular set of acquaintance, but which were open to all who chose to enter and offer to join in the conversation, at the risk of meeting with cold looks and mortifying rebuffs. Thurlow, like his contemporary Dr. Johnson, took great pains in gladiatorial discussion, knowing that he excelled in it, and he was pleased and excited when he found a large body of good listeners. On the evening in question, a friend of his at the English bar strongly applauded the judgment against the supposed heir of the house of Douglas. For this reason, probably, Thurlow took the contrary side. Like most other lawyers he had read the evidence attentively, and in a succinct but masterly statement he gave an abstract of it to prove that the claimant was indeed the genuine issue of Lady Jane and her husband, — dexterously repelling the objections to the claim, and contending that there were admitted facts which were inconsistent with the theory of the child being the son of the French rope-dancer. Having finished his argument and his punch, he withdrew to his chambers, pleased with the victory which he had obtained over his antagonist, who was no match for him in dialectics, and who had ventured to express an opinion upon the question without having sufficiently studied it. Thurlow, after reading a little brief for a motion in the King's Bench, which his clerk had received in his absence, went to bed, thinking no more of the Douglas cause, and ready, according to the vicissitudes of talk, to support the spuriousness of the claimant with equal zeal. But it so happened that two Scotch law agents, who had come up from Edinburgh to enter the

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appeal, having heard of the fame of Nando's, and having been told that some of the great leaders of the English bar were to be seen there, had at a side table been quiet listeners of the disputation, and were amazingly struck with the knowledge of the case and the acuteness which Thurlow had exhibited. The moment he was gone, they went to the landlady and enquired who he was? They had never heard his name before; but finding that he was a barrister, they resolved to retain him as junior to prepare the appellant's case, and to prompt those who were to lead it at the bar of the House of Lords. A difficulty had occurred about the preparation of the case, for there was a wise determination that, from the magnitude of the stake, the nature of the question, and the consideration that it was to be decided by English law Lords, the *plaidoyer* should be drawn by English counsel, and the heads of the bar who were retained—from their numerous avocations—had refused to submit to this preliminary drudgery.

Next morning a retainer, in "*Douglas* v. *The Duke of Hamilton,*" was left at Thurlow's chambers, with an immense pile of papers, having a fee indorsed upon them, ten times as large as he had ever before received. At a conference with the agents (who took no notice of Nando's), an explanation was given of what was expected of him,—the Scotchmen hinting that his fame had reached the "Parliament House at Edinburgh." He readily undertook the task, and did it the most ample justice, showing that he could command, upon occasion, not only striking elocution, but patient industry. He repeatedly perused and weighed every deposition, every document, and every pleading that had ever been brought forward during the suit, and he drew a most masterly case, which mainly led to the success of the appeal, and which I earnestly recommend to the law student as a model of lucid arrangement and forcible reasoning.

He is patronised by the Duchess of Queensberry.

While so employed he made acquaintance with several of the relations and connections of the Douglas family, who took the deepest interest in the result; and, amongst others, with the old Duchess of Queensbury, the well-known friend of Gay, Pope, Swift, and the other wits of the reign of Queen Anne. When she had got over the bluntness of his manners (which were certainly not those of the *vieille cour*),

she was mightily taken with him, and declared that since the banishment of Atterbury and the death of Bolingbroke, she had met with no Englishman whose conversation was so charming. She added that, being a genuine Tory, she had considerable influence with Lord Bute, the new favourite, and even with the young Sovereign himself, who had a just respect for hereditary right, lamenting the fate of the family whom his own had somewhat irregularly supplanted. On this hint Thurlow spoke, and, with the boldness that belonged to his character, said that "a silk gown would be very acceptable to him." Her Grace was as much surprised as if he had expressed a wish to wear a silk petticoat — but upon an explanation, that the wished-for favour was the appointment to the dignity of King's Counsel, in the gift of the Government, she promised that it should be conferred upon him.

She obtains a silk gown for him.

She was as good as her word. Lord Bute made no sort of difficulty when told that the number of King's Counsel might be indefinitely increased, bringing only a charge of £40 a year on the public, with an allowance of stationery.*

Lord Northington, in whose department strictly the job was, boggled a little, for he knew nothing of Thurlow, except remembering him a noisy briefless junior on the Western circuit, and upon inquiry he found that neither from his standing, nor his business, had he any fair pretension to be called within the bar; but the Duchess of Queensberry contrived that George III., although he then had never seen the man to whom he was afterwards so much attached, should intimate to the Chancellor that this young lawyer's promotion would be personally agreeable to his Majesty himself, and all the Chancellor's objections instantly vanished. In Dec. 1761, Thurlow boldly doffed his stuff gown for the silk, renouncing his privilege to draw law papers, or to appear as junior counsel for any plaintiff.

Jan. 1762.

In the following term he was elected a Bencher of the Inner Temple, but it was some time doubtful whether he

* With this went a certain number of bags to carry briefs; and when I entered the profession no man at the bar could carry a bag who had not received one from a King's counsel. All these perquisites were swept away by the Reform Ministry of 1830.

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would reap any other fruits from his new rank. Rival barristers complained much, that in the seventh year from his call, being known for nothing except his impertinence to Sir Fletcher Norton, he should be put over the heads of some who might have been his father, while the general consolation was, "that the silk gown could never answer to him, and that he had cut his own throat." He himself had no misgivings, and there were a few of more discernment, who then predicted that he would eventually rise to the highest office in his profession. *

Thurlow's qualifications.

In truth, his success was certain. With the respectable share he possessed of real talents and of valuable acquirements, together with his physical advantages of dark complexion, strongly marked features, piercing eyes, bushy eyebrows, and sonorous voice, all worked to the best effect by an immeasurable share of *self-confidence*,—he could not fail. This last quality was the chief cause of his greatness.

Advantages of *self-confidence*.

Of him, Lady Mary Wortley Montague seems to have been speaking prophetically, if, according to her evident meaning, you substitute "self-confidence," for "impudence," — which properly belongs only to a shameless impostor. "A moderate merit," writes she, "with a large share of *impudence*, is more probable to be advanced than the greatest qualifications without it. The first necessary qualification is *impudence*, and (as Demosthenes said of action in oratory) the second is *impudence*, and the third still *impudence*. No modest man ever did, or ever will, make his fortune. Your friends, Lord Halifax, Robert Walpole, and all other remarkable instances of quick advancement, have been remarkably *impudent*. The ministry is like a play at court; there's a little door to get in, and a great crowd without — shoving and thrusting who shall be foremost; people who knock others with their elbows, disregard a little kick on the shins, and still thrust heartily forwards, are sure of a good place. Your modest man stands behind in the crowd, is shoved about by every body, his clothes torn, almost squeezed to death — and sees a thousand get in before him, that don't make so good a figure as himself."

* See vol. v. p. 254. of Southey's edition of Cowper's Works.

Thurlow in his silk gown.

When Thurlow appeared in court with his silk robe and full bottom wig — lowering frowns and contemptuous smiles successively passing across his visage as the arguments or the judgment proceeded — the solicitors could not behold him without some secret awe, and without believing that he was possessed of some mysterious powers which he could bring into activity in their service. When he had an opportunity of opening his mouth, he spoke in a sort of oracular or judicial tone, as if he had an undoubted right to pronounce the verdict or judgment in favour of his client. He appeared to think that his opponent was guilty of great presumption in controverting any of his positions, and unless his cause was desperately bad (when he would spontaneously give it up) he tried to convey the notion that the Judges, if they showed any disposition to decide against him, were chargeable with gross ignorance, or were actuated by some corrupt motive. By such arts he was soon in first-rate business, and all of a sudden — from extreme poverty — in the receipt of a very large income. I do not find that he was counsel in any celebrated cases before he was Solicitor General; but Burrow, and the other contemporary reporters, show that during the eight following years, he argued many of the most important questions of law which came on for decision in Westminster Hall.

He attaches himself to the Tories.

Hitherto he had taken little part in politics, and he seemed in a state of great indifference between the two parties, associating with the members of both indiscriminately — in conversation, sometimes speaking for, and sometimes against the taxing of the colonies, and sometimes censuring, and sometimes defending the prosecution of Wilkes. Now beginning to feel the stings of ambition, and resolved upon political advancement, it was necessary to choose a side. During Lord Chatham's second ministry, the Whigs had gone down in the world most lamentably, and they seemed to have lost for ever their illustrious chief. Toryism was decidedly favoured at Court, and had the ascendency in both Houses of Parliament. Thurlow declared himself a Tory, and on the interest of the party he had joined — in the new Parliament which met in May, 1768, he was returned for Tamworth, since illustrated by a still more distinguished representative. To

He is returned for Tamworth.

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this party he most zealously and unscrupulously adhered till he was deprived of the Great Seal by the younger Pitt; but I am afraid that, in his heart, he cared little about Tory principles, and that he professed and acted upon them so long — only to please the King and to aggrandize himself.

It might have been expected, from his impetuous and sanguine temper, that he would have been eager to gain parliamentary distinction as soon as he had taken his seat; but he had not yet selected his leader in the different sections into which the Tories were then subdivided, and he was cautious not to commit himself till it should be seen who gained the ascendency.

A.D. 1769. Hearing of the Douglas cause in the House of Lords.

Meanwhile the Douglas appeal, after eight years' preparation, came on to be heard at the bar of the House of Lords, and attracted a greater share of public attention than any political debate in either House. Thurlow led for the appellant, and, having for years devoted himself to the case — by his admirable pleading he showed what excellence he might have reached, and what solid fame he might have acquired, if his industry had been equal to his talent.

Thurlow's duel with Andrew Stewart.

This was a very brilliant passage of his life, for he was not only rapturously applauded as an advocate, but he gained immense *éclat* for his courage and gentleman-like deportment in an affair of honour to which the cause gave rise. As counsel for Mr. Douglas, the appellant, he felt it his duty to animadvert with great severity on the conduct of Mr. Andrew Stewart, a gentleman of education, and well esteemed in the world, who had been concerned as an agent in getting up the evidence and conducting the suit for the Duke of Hamilton. As soon as Thurlow had finished his first day's argument, Stewart sent him a challenge, requiring a hostile meeting next morning. Thurlow wrote back for answer, "that the desired meeting Mr. Stewart should have, but not till the hearing of the appeal was concluded." I believe he had said nothing against the challenger but what was justified by his instructions and the circumstances of the case — so that, according to professional etiquette, he might have applied for protection to the House of Lords, who would have treated the challenge as a contempt of their authority and a breach of privilege. When the hearing was over, the meeting

actually did take place in Kensington Gardens, and shots were exchanged—happily without effect. Mr. Stewart afterwards declared "that Mr. Thurlow advanced and stood up to him like an elephant."*

Jan. 31. 1770. His maiden speech.

I do not find that the honourable and learned member for Tamworth spoke in the House till the tremendous crisis in January, 1770, upon the re-appearance of Lord Chatham in full vigour, the dismissal of Lord Camden, the melancholy fate of Charles Yorke, and the formation of a new government to persecute Wilkes and to tax the colonies. In the debate on the resolution moved by Mr. Dowdeswell, arising out of Lutterell being seated for Middlesex because Wilkes was alleged to be disqualified by his expulsion, "that by the law of the land, and the law and usage of parliament, no person eligible of common right can be incapacitated by a resolution of the House, but by an act of parliament only," Mr. Wedderburn supported it against Lord North, saying, "the noble Lord asks 'will the House of Commons censure and disgrace itself?' let me ask in my turn, will the House of Commons compose the minds of the people? Will they recover the good opinion and confidence of those whom some gentlemen have been pleased to call the *rabble, the base-born,* the *scum of the earth?*"—Then covered with maiden blushes, thus spoke the honourable and learned member for Tamworth: "Sir, as the argument now seems to be carried on by questions, I shall ask in my turn, how came the House of Commons to determine who should sit among them formerly if they cannot determine who shall sit among them now? How came they to determine that the Attorney General, the Solicitor General, and the Masters in Chancery, could not sit here, because they might possibly be called upon to attend the House of Lords? and how came this determination to be acquiesced in till those persons were readmitted by a subsequent vote?"†

* I have in vain searched the "Annual Register" and contemporary magazines and newspapers for farther particulars of this duel. A gentleman still alive, who remembers it well, says that "Thurlow, on his way to the field of battle, stopped to eat an enormous breakfast at a tavern near Hyde Park Corner."

† 16 Parl. Hist. 804. A few days before the House had heard the maiden speech of a very different man, the Honourable C. J. Fox.—16 Parl. Hist.

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This is a very fair specimen of Thurlow's manner; for he never hesitated to resort to reasoning which he must have known to be sophistical, or to make a convenient assertion, — trusting largely to the ignorance of his audience. There was no analogy between determining whether by the usage of parliament a particular office was a disqualification to sit in the House of Commons, and enacting a new disqualification by a vote. Moreover, in point of fact, there never had been any votes, such as he supposed, for or against the general right of the Attorney and Solicitor General and the Masters in Chancery to sit in the House. But he spoke in such a loud voice, and with such an air of authority, that no one ventured to contradict him, and he was considered a great acquisition by the Government.

March 28. 1770. He is appointed Solicitor General.

The office of Solicitor General immediately after became vacant by the resignation of Dunning, and Thurlow was joyously appointed to it.*

726. This was a very memorable Session in our party history. During the course of it came out Dr. Johnson's "False Alarm," and Edmund Burke's "Causes of the present Discontents," in the worst and best styles of the respective authors.

Comparison between Thurlow and Sir William Blackstone.

* In a Life of Sir W. Blackstone prefixed to his "Reports," it is said that he upon this occasion declined the office of Solicitor General (vol. i. xvii.); but the offer was very faint — merely in compliance with an expectation which had been held out to him when he entered parliament, and it was accompanied with a promise of the first puisne judgeship which should become vacant. The "Doctor," as he was then called, was infinitely superior as a jurist to Thurlow, and was covered with literary glory by the recent publication of his "COMMENTARIES," which rescued our profession from the imputation of barbarism; and while it contained a systematic Digest of English law, was justly praised by Charles Fox for its style as a specimen of genuine Anglicism. But the Doctor being returned for Westbury at the same time as Thurlow for Tamworth, entirely failed in the House of Commons. Being called forth to defend the Government on the Middlesex election, he wrecked his reputation as a constitutional lawyer; and George Grenville, reading the book, proved that he had contended for a different doctrine in debate from that which he had laid down in his Commentaries. Having published a pamphlet in his own defence, he got into a controversy with Junius, in which he was signally worsted[1]; and his retreat from political life was now earnestly desired both by himself and by his patrons. Thurlow was their man!

The Duke of Grafton's MS. Journal, after stating that Lord North behaved ill to his Solicitor General, thus proceeds: —"Mr. Dunning was too high-minded to submit to any indignity. Not long after he resigned his office, and was succeeded by Thurlow, a bold and able lawyer, and a speaker of the first rate, as well in parliament as at the bar. His principles leaned to high prerogative, and I fear his counsels brought no advantage to the King or the nation."

[1] See Junius to Sir W. Blackstone, 29th July, 1769, and the four following letters.

# CHAPTER CLVI.

CONTINUATION OF THE LIFE OF LORD THURLOW TILL HE WAS MADE LORD CHANCELLOR.

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THE new Solicitor General escaped knighthood, now considered a disgrace.* He was immediately obliged to present himself before his constituents at Tamworth, but he was re-elected without opposition, and he continued to represent this place till he was transferred to the Upper House.

The Solicitor General's conduct in parliament.

He did not, by any means, disappoint expectation as a parliamentary partisan. While a representative of the people, he ever readily and zealously followed the instructions of the Government, as if he had been arguing in a court of law from his brief. He often displayed, in the debate, vigorous reasoning and manly eloquence,— and, when beaten, he could always cover his retreat with a broad assertion, a cutting sarcasm, or a threatening look.

Debate on the bill to take away the Attorney General's right to file criminal informations.

The first occasion on which he distinguished himself, after becoming a law officer of the Crown, was in the debate on the motion for leave to bring in a bill to take away the power of filing *Ex Officio* Informations. This was opposed, in a very able and temperate speech, by Sir William De Grey, the Attorney General, who showed, by clear authorities, that the power by law belonged to his office, and argued, that there could be nothing unconstitutional in his being allowed, upon his responsibility, to bring a man to trial for sedition before a jury, who would decide upon the truth of the charge. Serjeant Glynn and others followed on the opposite side, contending that the power was liable to abuse; that it had been abused; and that a jury was no pro-

* George III., to keep up the respectability of the order, soon after insisted on the law officers of the Crown, as well as the Judges, submitting to it; and the same rule has since been observed, unless in the case of the sons of peers, who are "honourable" by birth.

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tection, on account of the fashionable doctrine now acted upon by Lord Mansfield and other Judges, that "the jury had nothing to do with the question of libel or no libel; the criminality or innocence of the writing charged to be libellous being a pure question of law for the determination of the Court."—Thus answered Mr. Solicitor, in that rude, bantering, turbulent, impressive style of oratory which characterised all his parliamentary harangues, and which gained him such a reputation with his contemporaries: "Sir, however much a representative may be bound to express the voice of his constituents, I cannot greatly approve of that patriotism which prompts any member to adopt every popular rumour, and to assert the rumour as a fact, on his own authority. We ought to make a discreet selection, to distinguish between truth and falsehood, and not to swallow every vulgar prejudice. Therefore, I cannot applaud those oblique reflections which, in imitation of pamphleteers and newsmongers, some honourable members seem so fond of casting on this House. Such strokes may serve as stilts to raise the authors up to the notice of the mob, but will not, I am persuaded, add to their character in this assembly. The artifice is too gross to deceive. There is no lawyer, nor any other sensible person, within these walls who will not allow all the prosecutions lately carried on by the Attorney General were extremely proper, if not necessary. Why, then, should we, when no real danger, no late encroachment, presses, sally forth, like a band of Quixotes, to attack this windmill of a giant, this imaginary magician, who keeps none of our rights, none of our privileges, under the power of his enchantments? Not a single wight, not a single damsel, has he injured. All who pretend to dread him walk at large, ay, more at large, I suspect, than they ought. Our booksellers and printers have no reason to complain of being held in trammels. They are allowed every reasonable indulgence, and they carry it to its utmost limits. Shall we give licentiousness an ample range? For my own part, I cannot help considering the project as a crazy conceit, solely intended for gaining a little popularity; for men, however helpless, will 'spread

Thurlow's speech against the liberty of the press.

the thin oar and catch the driving gale,'—the popular breeze, whose murmur is so soothing to certain ears. But the wisdom and gravity of this House must perceive that the power at present lodged in the Attorney General is necessary, as well for speedily punishing as preventing daring libels. If no other process is left but the common one of bringing the affair before a grand jury, the delinquent may in the meanwhile escape. No offender can be brought to justice. What is the consequence? The licentiousness of the press will increase. Crimes will multiply. Nothing will be published but libels and lampoons. The press will teem with scurrility and falsehood. The minds of the people will be misled and perverted by scandalous misrepresentations. The many-headed beast will swallow the poison, and the land will consequently be one scene of anarchy and confusion." He next applied himself to a recent conviction of a bookseller for the unauthorised act of a servant, and according to the report (which is scarcely credible) he worked himself up to say,—"In civil cases, the master is confessedly answerable for the faults of his servants. How comes he in criminal cases not to be subject to the same rule? The culprit was justly condemned, and will be justly punished." * He then comes to handle the rights of juries in cases of libel (be it remembered) after they had been solemnly vindicated by Lord Camden, who had recently resigned the office of Chancellor, having held it for several years with general applause:—"Sir, the other charge is equally groundless and absurd. The construction of libels belongs by law and precedent to the Judge and not to the jury, because it is a point of law which they are not competent to decide. If any other rule prevailed,—if the matter were left to the jury,—there would be nothing fixed and permanent in the law. It would not only vary in different counties and cities, according to their different in-

He denies the right of juries to consider the question of libel or no libel.

* This case is expressly provided for by a bill I had the honour to introduce into parliament, commonly called "Lord Campbell's Libel Act," 6 & 7 Vic. c. 96. s. 7., saving the master from criminal responsibility for the unauthorised act of the servant.

terests and passions, but also in the minds of the same individuals, as they should happen at different times to be agitated by different humours and caprices. God forbid that the laws of England should ever be reduced to this uncertainty! All our dictionaries of decisions, all our reports, and Coke upon Littleton itself, would then be useless. Our young students, instead of coming to learn the law in the Temple and in Westminster Hall, would be obliged to seek it in the wisdom of petty juries, country assizes, and untutored mechanics. Adieu to precision, adieu to consistency, adieu to decorum! All would be perplexity, contradiction, and confusion. The law would be like Joseph's coat, become nothing but a ridiculous patchwork of many shreds and many colours,—a mere sick man's dream, without coherence, without meaning,—a wild chaos of jarring and heterogeneous principles, which would deviate farther and farther from harmony. Yet the prevention of this state is the crime with which our Judges are charged! *O tempora! O mores!* to what are we at last come?"*

It does seem astounding to us that such a speech should be delivered, and tolerated, and applauded by the ministers of the Crown after the Revolution, and in the latter end of the eighteenth century. It ought to be recorded as showing the progress of public opinion and the improvements of the constitution in recent times. The matter in dispute—the Attorney General's power to file criminal informations for libel, is very immaterial. He might safely be permitted, in all cases as public prosecutor, to put parties accused on their trial, and the institution of grand juries will be preserved in this country for its collateral benefits rather than as a safeguard to innocence against unjust accusation. There is no longer any disposition in Attorney Generals to persecute the press, and if there were, no difficulty is ever experienced in inducing grand juries to find bills of indictment in any cases, however frivolous. Looking to the manner in which indictments for perjury and for conspiracy are used as in-

* 16 Parl. Hist. 1144.

struments of revenge, vexation, and extortion, it would be a greater improvement upon our juridical institutions to enact that no such indictments shall be preferred without the sanction of a responsible public officer, than that the power of filing criminal informations should be entirely abolished.* But the observations by which Thurlow defended it were most insulting to public liberty, and if now offered by a law officer of the Crown under what is called a Tory or Conservative government, would insure his being disclaimed by his leader overnight, and dismissed from his office next morning.

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Dec. 6. 1770. His speech against trial by jury.

But Mr. Solicitor Thurlow was so much applauded and encouraged that on Serjeant Glynn's motion soon after for an inquiry into the administration of criminal justice, he considerably exceeded his former doings; for he not only proposed a severe censure upon the mover, but plainly intimated an opinion that trial by jury should be abolished in all cases of libel, and that the liberty of the press should be in the exclusive guardianship of a Judge appointed by the Crown. "If," said he, "we allow every pitiful patriot thus to insult us with ridiculous accusations without making him to pay forfeit for his temerity, we shall be eternally pestered with the humming and buzzing of these stingless wasps. Though they cannot wound or poison, they will teaze and vex. They will divert our attention from the important affairs of state to their own mean antipathies, and passions, and prejudices. I hope we shall now handle them so roughly as to make this the last of such audacious attempts. They are already ridiculous and contemptible. To crown their disgrace, let us inflict upon them some exemplary punishment. In deciding the question of libel, so many circumstances are at once to

* During my seven years' Attorney Generalship I filed only one criminal information — against Fergus O'Connor for libels in the "Northern Star," inciting the people to insurrection and plunder. There could not have been the smallest difficulty in having had an indictment found by the Grand Jury of the county of York; but I wished to take upon myself the whole responsibility of the prosecution. Cobbett (I think with some justice) complained that the Attorney General, instead of boldly prosecuting him by his own authority, had recourse to the subterfuge of an indictment, — and by this, among other topics, got an acquittal.

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be kept in view, so many ponderous interests are to be weighed, so many comparisons to be made, and so many judgments formed, that the mind of an ordinary man is distracted, and confounded, and rendered incapable of coming to any satisfactory conclusion. None but a judge who has from his infancy been accustomed to determine intricate cases, is equal to such a difficult task. *If we even suppose the jury sufficiently enlightened to unravel those knotty points, yet there remains an insuperable objection. In state libels their passions are frequently so much engaged, that they may be justly considered as parties concerned against the Crown. No justice can therefore be expected from them in these cases.* In order to preserve the balance of our constitution, let us leave to the Judge, as the most indifferent person, the right of determining the malice or innocence of the intention of the libeller. Much dust has been raised about civil and criminal actions; but to what purpose? Is not reparation to be made to the public for any injury sustained by the public as much as to an individual? Is the welfare of the nation in general of less consequence than that of a single person? Where then is the propriety of making such a bustle about the malice or innocence of the intention? The injury done is the only proper measure of the punishment to be inflicted, as well as of the damage to be assessed."*

Jan. 23. 1770. Thurlow is made Attorney General.

This tirade against trial by jury, and confounding of civil injuries to individuals with crimes against the state, proved so agreeable to the higher powers, that at the end of a month Thurlow was promoted to the office of Attorney General, in the room of De Grey, laid asleep on "the cushion of the Common Pleas," and the Government was thereby supposed to be greatly strengthened.

Mr. Attorney General Thurlow is beaten in his prosecution of

When he made these speeches he was exceedingly exasperated against juries, by reason of the verdict in the case of *Rex* v. *Miller*. This was a criminal information for printing and publishing Junius's celebrated letter to the King. It was contrived that the Solicitor General, by reason of his supposed superior

* 16 Parl. Hist. 1290.

vigour, should conduct the trial on the part of the Crown. Notwithstanding his doctrine, that the jury had nothing to do with the question whether the letter was a libel or not, he was at great pains in addressing them to impress them with an opinion of its criminality. *More suo* he thus discoursed of the liberty of the press: — "Undoubtedly the man who has indulged the liberty of robbing upon the highway, has a very considerable portion of it allotted to him. But where is the liberty of the man who is robbed? When the law is silent, reputation is invaded, tyranny is established, and an opportunity is given to venal writers to vent their malice for money against the best characters in the country. Do not, under pretence of protecting the liberty of those who do wrong, encourage them in the destruction of all laws human and divine." He then goes over the whole letter, sentence by sentence, denouncing its atrocity, and exclaiming, "For God's sake is that no libel?" Yet he concludes by telling them, very peremptorily, that they have only to consider whether the defendant printed and published the letter, and by cautioning them not to imitate the conduct of the infamous author who had become the accuser of his King, and attacking all mankind, had not the courage to show his face, or to tell his name. The clearest evidence was given that the defendant had printed and published the letter; but after a reply from Mr. Solicitor, more furious than his opening, the jury thought fit to find a verdict of NOT GUILTY — to the unspeakable delight of the assembled crowds, who rent the air with their acclamations.* — What added to his mortification was, that another prosecution against Woodfall for printing and publishing the same letter was conducted by Sir William de Grey, the Attorney General himself, who, displaying much more moderation and mildness, prevailed upon the jury to find a verdict of "Guilty of printing and publishing," — although they added the world "only," on which account a new trial was granted.†

the printer of Junius's Letters.

* 20 St. Tr. 870—896. † Ib. 895—922.

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March 28. 1771. Case of Brass Crosby and Alderman Oliver for committing the messenger of the House of Commons.

Thurlow's first appearance in the House of Commons as Attorney General, was on the memorable occasion when Crosby the Lord Mayor, and Oliver an Alderman of London, were brought to the bar, — having discharged a printer, arrested by order of the House for publishing debates, — and having committed to custody the officer of the House who executed the arrest. Alderman Oliver, instead of making any apology, said "he owned and gloried in the fact laid to his charge; he knew that whatever punishment was intended, nothing he could say would avert it; as for himself he was perfectly unconcerned; and as he expected little from their justice he defied their power." A motion being then made to send him to the Tower, which was resisted by Sir George Savile and Serjeant Glynn, Mr. Attorney Thurlow, resorting to the *genus dicendi interrogans*, of which he was particularly fond, exclaimed, "Shall it be said, sir, that this House is dishonoured in maintaining its confirmed privileges? Is not the generosity, is not the pride of the House, alarmed by so degrading a competition? Have not the members of this House as conscientious a veneration for oaths as the Mayor of London? Or are they afraid to punish his licentiousness, when he is not afraid to insult their authority? All that's man, all that's Briton in me, is firing in my bosom while I ask these simple questions! Well may our enemies say that we have sacrificed the dearest ties that bound us to our constituents, if we now suffer the whole body of the English Commons to be trod upon by the instruments of a despicable faction. Have we so long defended our privileges against the tyranny of kings, to fall at last before the turbulence of a seditious city-magistrate? Or has the constitution given us sufficient title to guard against the encroachments of the Crown, without means of crushing the ambition of an Alderman?"

Thurlow's furious speech against them.

He is chastised by Dunning.

Mr. Attorney received a very severe chastisement from Dunning, who used language consistent with the just preservation of parliamentary privileges, — and to be for ever had in remembrance as a caution against the abuse of it. "The people will naturally inquire how we, their representatives,

have executed our trust, and will as naturally execrate our names,

> 'If once we vilely turn that very power
> Which we derive from popular esteem
> To sap the bulwarks of the public freedom.'

Sir, the people have already opposed us by their magistrates, and they will oppose us farther by their juries; — though were we, in fact, as much respected as we are already despised, — as much esteemed as we are universally detested, — the establishment of tyranny in ourselves, who are appointed for no purpose but to repel it in others, would expose us to the abhorrence of every good Englishman. Let us, therefore, stop where we are; let us not justify oppression by oppression, nor forget our posterity if we are regardless of our country. Let even the abject principle of self which actuates, I fear, too many of my auditors, for once operate in the cause of virtue." Alderman Oliver was sent to the Tower by a majority of 170 to 38, and Crosby, the Lord Mayor, by a majority of 202 to 39 *; but by this struggle, the right of publishing parliamentary debates was substantially established, and it is therefore to be reckoned a remarkable æra in our constitutional history. †

May, 1773.

In the following session the Minister was much puzzled in meeting General Burgoyne's motion to censure the proceedings of Lord Clive in the East Indies, by which a new empire was added to the Crown of England. The considerate were aware that this extraordinary man deserved to have statues erected to him, but there was a public clamour against him which the Government was afraid to face. It was, there-

* 17 Parl. Hist. 58—163.

† The right never has been questioned since. There is still a foolish standing order of both Houses against publishing debates; but this is a mere dead letter, and the minister who would try to enforce it would be like Canute on his throne forbidding the flowing of the tide. Indeed, there are very few members who would now speak if their speeches were not to be reported; and after a division, proceedings are suspended till the reporters' gallery is re-opened.—The effectual protection of the press and of the public would require an enactment that no one should be liable to an action or indictment for publishing a fair and *bonâ fide* report of the proceedings of either House. I introduced a clause to this effect into my Libel Bill; but though it was warmly supported by Lord Denman, it was opposed by Lord Brougham, and I could not carry it.

fore, left an open question. "Lord North himself spoke for the inquiry, but faintly and reluctantly *," while the Solicitor General was required to oppose it, and the Attorney General to support it. The latter, who had no notion of ever fighting with muffled gloves, fell foul of his colleague, and of Indian conquest, and Indian peculation. "The evils complained of," said he, "have been slurred over, or ingeniously palliated by my honourable and learned friend. How can we better begin the work of Indian reform, which all admit to be necessary, than by resolving that the acquisitions here described are illegal? and how unjust, nugatory, and ridiculous would it be to come to such a determination without taking a retrospective view, and enforcing future regulations by present vigour? I admit that what is done in the heat and hurry of conquest, in the moment of revolution, is not to be examined too critically by the rules of school philosophy, and the morality of the closet. But, sir, these misdeeds are of a very different complexion — cool deliberate transactions — treaties — negotiations — wars or no wars — the event the same in all — one general scene of rapine and plunder — nabobs dethroned — nabobs elected — pretended conventions with these children of power — these ephemeral sovereigns — not for the advantage of the Company, but for the profit of individuals. Did John Duke of Marlborough make treaties with foreign powers, stipulating that himself, Prince Eugene, and the Grand Pensionary should be paid so and so? To what purpose produce cases, if they are not cases in point? The oppressions of Bengal have been as severe in time of peace as in time of war? Can this be right? And if wrong, why not inquire into it? And why inquire into it, if, when your inquiry is finished, it is to produce nothing? No mode of conduct can be so weak as that which only points out crimes but takes no measures to punish them." Thus ran on for a long time the powerful but turbid stream of his eloquence, and notwithstanding a touching address from Lord Clive himself, — to the great embarrassment of the

Thurlow's speech against Lord Clive.

* Gibbon to Mr. Holroyd, 11th May, 1773. Miscell. Works, i. 469.

Government, the resolutions were all carried by a large majority. *

Feb. 17. 1774. His first encounter with Horne Tooke: he is defeated.

In the beginning of 1774, Thurlow had his first encounter with Horne Tooke — in which he was foiled. The parson was brought to the bar of the House on a charge of being the author of a libellous letter in the "Morning Advertiser," addressed to Sir Fletcher Norton, the Speaker; but he did not choose to plead guilty, and there being no evidence to prove the authorship, Mr. Attorney boisterously supported an inquisitorial motion, that certain journeymen printers from the Morning Advertiser office should be examined to know from whom they received the manuscript. He thus concluded, "With respect to any cruel intention against Mr. Horne, I disclaim, for one, so foul an idea. It is well known that in my official character, I want no author. The printer of a libel is enough for me, and I ever think it injudicious to look beyond the printer. I am not Mr. Horne's prosecutor, and, personally, I am not his enemy. Further than the cause of justice is concerned, his acquittal or conviction is to me a matter of utter indifference. If he be innocent, I shall be glad to see him discharged; but if he be guilty, I should be sorry to see a man escape with impunity who has daringly libelled the British Commons legally assembled in parliament." Although Mr. Burke declared that "the motion — begot by folly, and nursed by despotism — was without a precedent in the annals of infamy," it was carried by a large majority †: but the printers being called in, professed the most profound ignorance on the subject, and this time the parson walked off triumphantly. ‡

Feb. 25. 1774. Thurlow opposes the Grenville Act.

As the Grenville Act was passing, Thurlow opposed it, and truly foretold that the time would come when the decisions of the Committees under it would be deemed as corrupt as those of the House in a body — the distinction in practice being only that the ballot gave a petitioner or sitting member belonging to the opposition the chance of having

* 17 Parl. Hist. 850—882.

† 132 to 44.

‡ 17 Parl. Hist. 1003—1050.

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in the committee a majority of his own partisans *; whereas when the whole House sat as judges, he was almost sure to be "cast," and a decision against the ministerial candidate indicated an approaching change in the administration.

His attack on authors and booksellers.

Soon afterwards Thurlow attacked and threw out the bill for the extension of copyright, then confined to the brief period of fourteen years. He denounced the booksellers as "a set of impudent monopolising men, who had raised a fund of 3000*l.* to file bills in Chancery against any person who should endeavour to get a livelihood as well as themselves, and pretending to have an exclusive right to publish all works from Homer's Iliad to Hawkesworth's voyages — a mere composition of trash — for which they had the audacity to demand three guineas!" †

His violent hatred of the Americans.

But the grand subject of parliamentary discussion now was the dispute with America. As may be supposed, Thurlow took a most zealous part, and uttered very violent language against the colonists. He scorned the very notion of concession or conciliation; he considered "sedition" and "treason" (like *tobacco* and *potatoes*) the peculiar growth of the American soil. The natives of those regions he thought were born to be taxed, and when his friend Johnson's pamphlet, "Taxation no Tyranny," was published, he lamented that the passage was struck out which had been originally introduced as an answer to the objection that we had not previously taxed them: — "We do not put a calf into the plough — we wait till he is an ox." ‡

May, 1774. His offensive assertion of the right to tax Americans.

His first explosion was in the debate upon the Coercion Bill for regulating the government of Massachusets' Bay. Charles Fox having severely attacked it, saying that there was not an American but who must reject or resist the right of taxing them, and that the bill was a clear viola-

* 17 Parl. Hist. 1072. I much fear that Sir R. Peel's act on this subject will be found equally inoperative; for though there is an attempt made by it to exclude chance, and deliberately to trim the balance, — unequal weight is always thrown into one scale, — and the degree to which the equipoise is destroyed becomes immaterial.

† 17 Parl. Hist. 1086. 1104.

‡ *Johnson.* "They struck it out either critically as too ludicrous, or politically as too exasperating." — *Boswell,* ii. 327.

tion of charters, Mr. Attorney answered: "Sir, this Bill is adopted to give magistracy the requisite authority for the execution of the laws; being a measure of precaution, it carries with it no severity, unless the pleasure of disobeying is cheaply purchased by punishment. To say that we have a right to tax America and never to exercise that right, is ridiculous; and a man must abuse his own understanding very much to whom that right can appear doubtful. We are told that we should ask them to tax themselves; but to procure a tax by requisition is a most ridiculous absurdity, the sovereignty being admitted to remain in this country. Their charter is subject to our legislative power; and whoever looks into it will see that no privileges were meant to be given them inconsistent with our right to legislate for them, and to tax them when we think they ought to be taxed." Burke took him severely to task for these expressions; but so low was the Whig minority at this time, that, on the division, they could only muster 64 to 239.*

Feb. 2. 1774. He justifies the appellation of "Rebels," applied to the Americans.

In the debate which took place on the address to the Crown shortly before hostilities commenced, Dunning having strongly objected to the term "Rebels," applied by Lord North to the Americans, Thurlow thundered out a dreadful denunciation against them, enumerating their alleged breaches of allegiance, and exclaiming, "Now, sir, if this is not rebellion, I desire the honourable and learned gentleman to tell us what is rebellion." He maintained that they were "rebels;" that they ought to be treated as such; and that vigorous measures of coercion, before they had marshalled their armies, could alone save us from the ruin which would overtake us if their plan of independence were carried into effect.† This controversy was renewed in the debate upon the bill for cutting off the trade of the New England colo-

* 17 Parl. Hist. 1313.

† 18 Parl. Hist. 225. Lord North soon afterwards, at a city dinner, having announced the receipt of intelligence of an advantage gained over the "Rebels," and being taken to task by Charles Fox and Colonel Barrè, who were present, for applying such language to "our fellow-subjects in America," exclaimed, with the inimitable talent for good-humoured raillery which distinguished him, "Well, then, to please you, I will call them *the gentlemen in opposition on the other side of the water.*" — This has been told me as a traditionary anecdote not hitherto in print.

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nies, when Dunning contending that the Americans were only defending their just rights, Thurlow declared "he had deliberately given a written opinion upon papers laid before him, that there was *a rebellion* in Massachusets' Bay;" but, the House being in Committee, Sir Fletcher Norton, the Speaker, properly observed that "rebellion" was not a term known to the law, and that the only legal question was, whether there had been a "levying of war," amounting to *high treason?* *

Feb. 10. 1775. His assertion that "he left the lawyer in Westminster Hall."

Of all the orators on the Government side in the debates which ushered in the fatal strife, the language of Thurlow was always the most violent and exasperating, and he seems to have been actuated by the belief that it was desirable to goad the colonists into open resistance, as they might then be effectually crushed. It is amusing to find him declaring that he did not speak, on such occasions, as a lawyer; "that he always did, and always would, leave the lawyer in Westminster Hall, and be in that House only a member of Parliament †;" by which, judging from his practice, he seemed to consider that he had the privilege, which has been practised by other Attorney Generals, and by Chancellors too, in debate, to lay down for law what best suited his purpose at the moment. Of this he soon after gave a practical example, by declaring that there was no illegality in sending Hanoverian troops, without the authority of Parliament, to garrison Gibraltar and Minorca, these places being no part of "this kingdom," so that the King might lawfully assemble a large army of foreigners in Guernsey, or Jersey, or the Isle of Man; whereas it seems quite clear, that by "this kingdom," in the Bill of Rights, must be understood "the British dominions." ‡

He maintains the right to repeal all the charters granted to America.

When the American Prohibitory Bill was discussed, he animadverted with scorn upon Mr. Burke's plan of conciliation. He added that, as Attorney General, he had a right, by *scire facias*, to set aside every charter in America as for-

* 18 Parl. Hist. 300. † Ib. 609.

‡ 18 Parl. Hist. 772. 776. 1332. He at last seems to have been ashamed of his bad law — saying, "it was idle to insist on the legality or illegality of the measure."

feited; although he allowed that, in our present situation, such a process would be justly the object of ridicule.*

Feb. 1777. His doctrine that "treason and rebellion were the natural growth of America."

Having introduced a bill to suspend the Habeas Corpus Act, with a view to American traitors, he defended it from the objection, that it might be put in force at home, by observing, that "treason and rebellion were the native growth of America." However, by way of threatening and taunting the members of opposition, he admitted there might be some individuals in England, who, by giving information and encouragement to the Americans, might be considered guilty of treason by "adhering to the King's enemies;" but it was proper that they should be narrowly watched, and that the Government should be armed with powers to counteract their projects.†

May 9. 1777. Thurlow is defeated in his attack on Sir F. Norton, Speaker of the House of Commons.

When the debate arose on Sir Fletcher Norton's famous speech to the King, on the occasion of presenting a bill to augment the civil list ‡, Thurlow, in trying to do what would be agreeable at Court, sustained a signal defeat. Mr. Rigby having animadverted upon the speech as disrespectful to the Crown, and not conveying the real sentiments of the representatives of the people, the Speaker appealed to the House, and threw himself upon their judgment. Mr. Fox moved a resolution, "that the Speaker on this occasion did express, with just and proper energy, the zeal of this House for the support of the honour and dignity of the Crown in circumstances of great public charge." Sir Fletcher Norton declared that he imagined he was acting in the faithful discharge of the trust committed to him; but if the House thought otherwise, he could not, and would not, remain longer in the chair. Nevertheless, Mr. Attorney General Thurlow furiously opposed the motion, and contended that "the speech neither contained

* 18 Parl. Hist. 999. † 19 Parl. Hist. 9. 19. 37. 39.

‡ "In a time of public distress, full of difficulty and danger, their constituents labouring under burthens almost too heavy to be borne, your faithful Commons postponed all other business; and with as much despatch as the nature of their proceedings would admit, have not only granted to your Majesty a large present supply, but also a very great additional revenue, — great beyond example, — great beyond your Majesty's highest expense. But all this, Sir, they have done in a well-grounded confidence that you will apply wisely what they have granted liberally," &c.

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the sentiments of the House, *nor was it strictly supported by fact.*" But Fox gave him a severe castigation, and pointing out the circumstance that the House had already unanimously thanked the Speaker for this speech, observed, that the House would never consent to their own degradation and disgrace in the person of their Speaker, nor would submit to condemn on a Friday what they had highly praised on the Wednesday preceding. To Thurlow's extreme mortification, the motion was carried without a division, almost unanimously; and was followed by a fresh vote of thanks to Mr. Speaker "for his said speech to his Majesty." *

Dec. 2. 1777. Thurlow placed in a ludicrous position in the House of Commons, and once for a moment abashed.

Early in the following session of Parliament, Mr. Attorney was placed in a very ludicrous situation, which, on account of his extreme arrogance — making him dreaded both by friends and foes — seems to have caused not only general merriment, but general satisfaction. Mr. Fox having moved that there be laid before the House certain papers, relating to what had been done under the Act for cutting off the Trade of the American Colonies, Thurlow rose and inveighed most bitterly against the motion, asserting that it could only proceed from a desire to countenance the "rebels," and contending that it could not be granted with any regard to the dignity of the Crown, or the safety of the state. While he was still on his legs, proceeding in this strain, news was brought that in the other House the very same motion having been made by the Duke of Grafton, the Government had acceded to it; and it had been carried unanimously. The fact was soon known by all present — and Lord North, after showing momentary symptoms of being disconcerted, joined in the titter. Thurlow pausing, the Secretary to the Treasury whispered in his ear the intelligence of what had happened "elsewhere," and the suppressed mirth broke out into a universal peal of laughter, — from the phenomenon that, once in his life, Thurlow appeared to be abashed. It was but for an instant. Quickly recovering himself, and looking sternly round at the Treasury Bench, he exclaimed, "I quit the defence

* 19 Parl. Hist. 230.

of administration. Let ministers do as they please in this or any other House. As a member of Parliament I never will give my vote for making public what, according to all the rules of policy, propriety, and decency, ought to be kept secret." — "*However*," says the Parliamentary History, "*this did not stifle the laugh, which continued for some time.*"* Lord North was frightened, and standing more in awe of his Attorney General than of his colleagues in the other House, he thought it best still to oppose the motion, and it was rejected by a majority of 178 to 80.†

We have no detailed account of any other speech of Thurlow respecting America while he remained a member of the House of Commons, but we know that his tone remained unaltered, and that when disasters began to multiply, he imputed them all to the ministers who had repealed the Stamp Act, and to the opposition leaders, who paralysed the energies of the country by their spurious patriotism — insisting that, as the "rebels" had had recourse to arms, warlike measures of more vigour could alone be expected to decide the controversy.‡

He is disposed to give some relief to the Roman Catholics. May 14. 1778.

Before closing my account of his career as a representative of the people, I ought in justice to him to mention, that he declared he would not oppose Sir George Savile's bill for the relief of Roman Catholics, and that he went so far as to say, "that he highly disapproved the law which debarred a parent from the noblest of all affections, — adopting the system of education which seemed best calculated for the happiness of his beloved offspring, — while he would require some consideration before he could agree to Popish priests being allowed freely to exercise the functions of their religion."§

A.D. 1774. His argument on the Grenada case.

Let us now attend to his forensic efforts while he was at the head of the bar, — which, I think, are more creditable to him. In *Campbell* v. *Hall*, the Grenada case, upon the four-and-a-half per cent. duties, he delivered a most admirable argument in support of the power of the Crown to legislate for conquered countries; taking a luminous view of the different systems of laws to which our colonies are subject,

* Vol. xix. 518. † Ib. 532. ‡ Ib. 587. § Ib. 1140.

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according to the manner in which they were settled or acquired.*

A.D. 1776. Trial of the Duchess of Kingston.

In the Duchess of Kingston's case,—having proved that the collusive sentence which she had obtained in the ecclesiastical court, annulling her first marriage, though binding upon her, was not binding on the House of Lords when trying her for bigamy,—he thus sarcastically concluded: "The sentence has deprived her of all conjugal claims upon Mr. Hervey; and we acknowledge it to be conclusive upon her, while we insist that it is merely void against all the rest of the world. She is therefore, according to us, a wife only for the purpose of being punished as a felon. These disappointments, these inconvenient consequences of guilt, are the bars which God and the order of nature have set against it; but they have not been found sufficient: it demands the interposition of public authority, with severer checks, to restrain *it*. Why is she thus hampered with the sentence she fabricated? Because she fabricated it; because justice will not permit her to allege her own fraud for her own benefit, nor hear her complain of a wrong done by herself. She displays to your Lordships not an anxiety to clear her injured innocence, but a dread of inquiry. Was this her solicitude to bring the question here? In such a Court, before so venerable an audience, we are to hear nothing pleaded against a charge of infamy, but a frivolous objection to enter upon the trial!"

Thurlow on the effect of the sentence of the Ecclesiastical Court.

His speech on the merits of the case.

The plea being overruled, Thurlow proceeded to state the facts of the case against her. His proemium is in a better taste than he often displays: "My Lords, it seems to be matter of just surprise that, before the commencement of the last century, no secular punishment had been provided for a

* 20 St. Tr. 312. On this and similar occasions he was ably assisted by his "devils," Hargrave and Kenyon, who answered cases for him, got up special arguments, and enabled him to devote much of his time to parliament and to jovial society. Kenyon was amply rewarded for his services, being made Attorney General, Master of the Rolls, and Chief Justice of the King's Bench. But poor Hargrave died neglected. He was, to be sure, with all his learning, hardly produceable in any judicial office; and latterly his mind was diseased—insomuch that when he was brought to Lincoln's Inn to vote as a Bencher in the choice of a Preacher, and his vote was objected to, Jekyl said, that "instead of being deprived of his vote, he ought to be allowed *two* votes, for he was *one beside himself*."

crime of this malignant complexion and pernicious example. Perhaps the innocence of simpler ages, or the more prevailing influence of religion, or the severity of ecclesiastical censures, together with those calamities which naturally and necessarily follow such an enormity, might formerly have been found sufficient to restrain it. From the moment these causes ceased to produce that effect, imagination can scarcely figure a crime that calls more loudly for the interposition of penal legislation; a crime which, besides the gross and open scandal given by it to religion, implies more cruel disappointment to the just and honourable expectation of the persons betrayed by it; which tends more to corrupt the purity of domestic life, and to loosen those sacred connections and close relations designed by Providence to bind the moral world together; or which may create more civil disorder, especially in a country where the title to great honours and high office is hereditary. My Lords, the misfortunes of individuals, the corruption of private life, the confusion of domestic relations, the disorder of civil succession, and the offences done to religion, are suggested as aggravations not of the particular case now under trial, but as miseries likely to arise from the example of the crime in general; and are laid before your Lordships only to call your attention to the course and order of the trial, and that there may be no misconception to mitigate the atrocity of such a violation of law, or to heighten the dangers with which it threatens the peace of families, and the public welfare. The present case, to state it justly and fairly, is stript of much of its aggravation. The advanced age of the parties, and their previous habits of life, would reduce many of these general articles of criminality and mischief to idle topics of empty declamation. No part of the present complaint turns upon any ruin brought on the blameless character of injured innocence; or to any disappointment occasioned to just and honourable pretensions; or to any corruption supposed to be introduced where modesty before prevailed. Nor should I expect much serious attention from your Lordships if I should urge, as aggravations of the Lady's guilt, the danger of entailing an uncertain condition upon a helpless offspring, or the apprehension of a disputed

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succession to the illustrious house of Pierrepoint. But your Lordships will likewise bear in mind, that every mitigation which might have induced you to pity an unfortunate passion in younger bosoms is entirely cut off here. If it be true that the sacred rites of matrimony have been violated, I am afraid it must also appear that dry lucre was the whole inducement—cold fraud the only means to perpetrate the crime. In truth, the evidence (if I am rightly instructed) will clearly and expressly represent it as a matter of perfect indifference to the prisoner which husband she adhered to, so that the profit to be drawn from this marriage, or from that, was tolerably equal. The crime, if less revolting in some particulars, becomes only more odious in others. The facts which I will now, with all simplicity, detail, form a case which it would be quite impossible to aggravate, and which it will be extremely difficult to extenuate." He then gave an interesting narrative of the two marriages, and of the sham sentence of nullity, excusing the ecclesiastical Court by the quotation:—

> "For oft though wisdom wake, suspicion sleeps
> At wisdom's gate, and to simplicity
> Resigns her charge; while goodness thinks no ill
> Where no ill seems ——."

After the verdict of *Guilty*, Thurlow, in a strain of rather coarse banter, argued that the Duchess was liable either to be hanged or to be branded with a hot iron, although he must have been aware that she was entitled, by her privilege of peerage, for her first felony to go scot free.*

He prosecutes Horne Tooke for a libel.

His next encounter in a Court of Justice was with a much more formidable antagonist. On news arriving of the battle of Lexington, a meeting to "sympathise with the Americans," was held in the City, and Parson Horne who superintended it drew up a minute of its proceedings which he

* 20 St. Tr. 355—651. By 4 & 5 Vict. c. 22., passed after the trial of Lord Cardigan, it is enacted that when an indictment is found against a Peer, he shall have no privilege except "to be tried by his Peers, and that upon conviction he shall be liable to the same punishment as the rest of her Majesty's subjects."—No invidious distinction of the peerage now exists, except the action of *Scan. Mag.* I intended to include the abolition of this in my Libel Bill; but I found the manner of doing it very difficult, for the action rests on statutes which merely forbid the telling of lies, and the spreading of false reports of great men—which it would appear rather absurd to repeal.

published in the newspapers,—stating that a subscription was to be raised "to be applied to the relief of the widows, orphans, and aged parents of our beloved American fellow subjects, who, faithful to the character of Englishmen, preferring death to slavery, were for that reason only inhumanly murdered by the King's troops at Lexington, in the province of Massachusets." For this an *ex officio* information had been filed against him, which came on for trial at Guildhall, before Lord Mansfield and a special jury. Mr. Horne was his own counsel, and entered the Court resolved to proceed to the utmost lengths in assailing both the Judge and the prosecutor; but he was new to his situation, and did not display much of the cleverness for which he was justly celebrated — while Thurlow fought on his own dunghill, and throughout the whole day had the advantage over him.* The most amusing scene during the trial was when the defendant insisted on calling the Attorney General as his witness: but Lord Mansfield held that none of the questions proposed to be put to him were relevant. The jury, with little hesitation, brought in a verdict of *Guilty*.

July 4. 1777. His speech in aggravation of punishment, urging that Horne Tooke should be set in the pillory.

Thurlow, in a manner which astonishes a modern Attorney General, eagerly pressed that the defendant, who was an ordained clergyman of the church of England, who was a scholar and a gentleman, should be set in the pillory. Speaking in aggravation of punishment,— after observing that any fine would be paid by a seditious subscription, and that imprisonment would be "a slight inconvenience to one of sedentary habits," he thus proceeded, "Pillory, my Lords, is the appropriate punishment for this species of offence, and has been so these two hundred years—not only while such prosecutions were rank in the Star Chamber, but since the Star Chamber was abolished, and in the best times since the

* If a defendant under such circumstances has the requisite qualifications for defending himself, he has a far better chance of acquittal being his own counsel, than with the most eloquent man at the bar to speak for him; but the self-defence is generally so unskilful that it is sure to end in a conviction. I only recollect two instances to the contrary — Mr. Perry obtained a signal triumph over Sir Vicary Gibbs, and Mr. Cobbett over Sir Thomas Denman. But the latter defendant only succeeded from the experience he had acquired from several failures. In his first contest with Sir James Scarlet he was very feeble and awkward, and he fell an easy prey to his powerful antagonist.

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Revolution. Tutchin was set in the pillory by Chief Justice Holt. That libeller to be sure complained of being subjected to the punishment which he said ought to have been reserved for fraudulent bakers. He conceived that the falsifying of weights and measures was a more mechanical employment than the forging of lies, and that it was less gentlemanlike to rob men of their money than of their good name. But this is a peculiarity which belongs to the little vanity which inspires an author, and it made no impression upon Sir John Holt, whose name will live with honour as long as the English constitution. Government cannot exist unless, when offences of this magnitude are presented to a Court of Justice, the full measure of punishment is inflicted upon them. Let us preserve the restraint against licentiousness provided by the wisdom of past ages. I should have been very sorry to have brought this man before you, in a case attended with so many aggravations, if your Lordships were not to show your sense of his infamy by sentencing him to an infamous punishment." The sentence, however, was only a fine of 200*l.* and a year's imprisonment; and even Dr. Johnson, inquiring about it, said, "I hope they did not put the dog in the pillory: he has too much literature for that."* During this imprisonment the defendant wrote his letter to Mr. Dunning on the "English Particle," which he enlarged into his "*Επεα πτεροεντα*, or the Diversions of Purley."—Notwithstanding Thurlow's vigorous push to set him in the pillory (as we shall see), they were subsequently reconciled, and the Ex-chancellor visiting the Ex-libeller in his retreat at Wimbledon discussed with him questions of philology.

Difficulty to account for Thurlow's House of Commons' reputation.

Towards the close of the American war, Mr. Attorney General Thurlow filled a great space in the public eye, and was considered the chief prop of the Government. It is certainly difficult for us to understand his high parliamentary reputation. I have already noticed all his reported speeches of the slightest consequence while he remained a member of the House of Commons, and none of them contain any thing like logical reasoning or statesmanlike views, or even good

* Bos. iii. 382. Johnson added, "Were I to make a new edition of my Dictionary, I would adopt several of Mr. Horne's etymologies."

declamation. The defectiveness of the printed reports cannot explain the disappointment we feel, for we have most admirable specimens of contemporary speakers — not only of Burke, who carefully edited his own orations, but of Lord Chatham, Dunning, and Lord North — and even his colleague the Solicitor General, appears in the "Parliamentary History" to much greater advantage. He must surely have displayed qualities which we cannot justly appreciate, to have been so favourably introduced into the graphic sketch of the House of Commons at this period, from personal observation, by the author of THE DECLINE AND FALL OF THE ROMAN EMPIRE: "The cause of government was ably vindicated by Lord North, a statesman of spotless integrity, a consummate master of debate, who could wield with equal dexterity the arms of reason and of ridicule. He was seated on the Treasury bench between his Attorney and Solicitor General, the two pillars of the law and state, *magis pares quam similes;* and the minister might indulge in a short slumber, whilst he was upholden on either hand by the majestic sense of Thurlow, and the skilful eloquence of Wedderburn." * Whatever others might think of him, he gave high satisfaction to his employers. Above all, the King was excessively delighted with his strong and uncompromising language respecting the Americans, and long placed a greater personal confidence in him than he had done in Lord Bute, or than he ever did in any other minister — perhaps with the exception of Lord Eldon.

Gibbon's account of him and Wedderburn.

The government being hard pressed in debate, though strong in numbers in the House of Lords, and the general inefficiency of Lord Bathurst producing serious inconvenience to the public service, it was resolved to accept the offer he had made to resign his office of Chancellor, — and there was not a moment's hesitation about his successor.

Thurlow Chancellor.

June, 1778.

* Gib. Mem. i. 146.

# CHAPTER CLVII.

CONTINUATION OF THE LIFE OF LORD THURLOW TILL THE RESIGNATION OF LORD NORTH AND THE FORMATION OF THE SECOND ROCKINGHAM ADMINISTRATION.

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June 19. 1778. Thurlow installed as Lord Chancellor.

THE transfer of the Great Seal took place at a council held at St. James's, on the 3d of June, 1778, — when Thurlow was sworn in Lord Chancellor, and a member of the Privy Council,— and on the first day of the following Trinity Term, after a procession from his house in Great Ormond Street to Westminster Hall, he was installed in the Court of Chancery with all the usual solemnities. * At the same time he was raised to the peerage by the title of BARON THURLOW of Ashfield, in the county of Suffolk.

Cowper's verses addressed to him on this occasion.

A striking homage was now paid to his success by Cowper the poet, who, though sincere and disinterested, exaggerated his merits, and was blind to his imperfections, from a tender recollection of their intimacy when brother pupils and idlers in the office of Mr. Chapman, in Lincoln's Inn: —

" Round Thurlow's head in early youth
And in his sportive days,
Fair Science pour'd the light of truth,
And Genius shed his rays.

" 'See,' with united wonder, cried
Th' experienc'd and the sage,
'Ambition in a boy supplied
With all the skill of age!

* "3d June, 1778. Memorandum. — The Right Honourable Henry Earl Bathurst, Lord High Chancellor of Great Britain, delivered the Great Seal to his Majesty in Council. His Majesty, on the said 3d day of June, delivered it to Edward Thurlow, Esq., with the title of Lord Chancellor of Great Britain, who was thereupon, by his Majesty's command, sworn of the Privy Council, and likewise Lord High Chancellor of Great Britain, and took his place at the board accordingly; and on Friday, the 19th of June, went in state from his house in Great Ormond Street to Westminster Hall, accompanied by the Judges, Serjeants, &c., where, in their presence, he took the oaths of allegiance and supremacy, and the oath of the Lord Chancellor of Great Britain, the Master of the Rolls holding the book, and the Deputy Clerk of the Crown reading the said oaths. Which being done, the Solicitor General moved that it might be recorded, and it was ordered accordingly." — *Cr. Off. Min. Book*, No. 2. f. 25.

"'Discernment, eloquence, and grace
Proclaim him born to sway
The balance in the highest place,
And bear the palm away.'

"The praise bestow'd was just and wise:
He sprang impetuous forth
Secure of conquest, where the prize
Attends superior worth.

"So the best courser on the plain
Ere yet he starts is known,
And does but at the goal obtain
What all had deem'd his own."

The new Chancellor did not disappoint public expectation, and as long as he enjoyed the *prestige* of office, he contrived to persuade mankind that he was a great judge, a great orator, and a great statesman,—although I am afraid that in all these capacities he was considerably overrated, and that he owed his temporary reputation very much to his high pretensions and his awe-inspiring manners.

Thurlow's qualifications as an Equity Judge.

He was tolerably well qualified to preside in the Court of Chancery from his natural shrewdness, from the knowledge of law which he had acquired by fits and starts, and from his having been for some years in full practice as an equity counsel. But he had never devoted himself to jurisprudence systematically; he was almost entirely unacquainted with the Roman civil law as well as with the modern codes of the continental nations, and, unlike Lord Nottingham, Lord Hardwicke, and the Chancellors whose memory we venerate, upon his elevation to the Bench he despised the notion of entering on a laborious course of study to refresh and extend his juridical acquirements. Much engrossed by politics, and spending a large portion of his time in convivial society or in idle gossip with his old coffee-house friends, he was contented if he could only get through the business of his Court without complaints being made against him by the suitors, or any very loud murmurs from the public. Permanent fame he disregarded or despised. He was above all taint or suspicion of corruption, and in his general rudeness he was very impartial; but he was not patient and pains-taking; he sometimes dealt recklessly with the rights which he had to determine, and he did little in

His want of industry.

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settling controverted questions or establishing general principles. Having been at the head of the law of this country for near thirteen years, he never issued an order to correct any of the abuses of his own Court, and he never brought forward in parliament any measure to improve the administration of justice.

Indifferent about law reform.

Assisted by Hargrave.

He is said to have called in Hargrave, the very learned editor of Coke upon Littleton, to assist him in preparing his judgments, and some of them show labour and research; but he generally seems to have decided off-hand without very great anxiety about former authorities.

Employs Mr. Justice Buller to sit for him in the Court of Chancery.

Frequently he employed Mr. Justice Buller, a very acute special pleader and nisi prius lawyer, to sit for him in the Court of Chancery. On resuming his seat, he would highly eulogise the decisions of "one whom he, in common with all the world, felt bound to respect and admire." But being privately asked "how Buller had acquired his knowledge of Equity?" "Equity!" said he; "he knows no more of it than a horse, but he disposes somehow of the cases, and I seldom hear more of them."

Nicknames given to him.

So fiercely did he spring on a luckless counsel or solicitor, that he generally went by the name of the "Tiger," and sometimes they would, out of compliment, call him the "Lion,"—adding that Hargrave was his "*provider*."

His habit of swearing on the bench.

His habit of profane swearing he could not always control, even when on the Bench, and those who were sitting under him near the Mace and the Purse, occasionally heard a muttering of strange oaths. Yet some supposed that, in reality, he had a great deal of good-humour under an ostentatiously rough exterior, and of this he would occasionally give symptoms. It is related that once, at the adjournment of the Court for the long vacation, he was withdrawing without taking the usual leave of the Bar, when a young barrister exclaimed in a stage whisper,—"He might at least have said d——n you!" The Chancellor hearing the remark, returned, and politely made his bow.*

* Hawkins's Memoirs, ii. 312.

Thurlow is handed down to us as a Judge by Brown, Vesey junior, and Dickens. It may be partly their fault, but he certainly appears in their Reports to little advantage. His judgments are not only immeasurably inferior to those of such a consummate master of juridical reasoning as Sir William Grant, but are not by any means equal to those of Pepper Arden, for whom Thurlow was accustomed to testify such ineffable contempt.

Q. Are resignation bonds simoniacal?

I will bring before the reader a few of his decisions which appear to me to be the most important and interesting. In *Bishop of London* v. *Fytche**, the question arose "whether bonds given by an incumbent to the patron of a living for resigning on request, are lawful." The Chancellor gave a strong opinion in favour of their legality, insisting that they not only were not simoniacal, but that they were not contrary to public policy, and that being properly controlled by a court of equity, they might be very salutary. He repeated this opinion with great boldness when the question came before the House of Lords. But the Judges being consulted, were divided upon it, and the Bishops taking the contrary side and voting,—there was a reversal by a majority of 19 to 18, so that general resignation bonds have since been unlawful, although there may still be a bond conditioned for the resignation of the incumbent, on the patron's son coming of age and being in holy orders.†

Constructive *presence* of a testator when will is subscribed by witnesses.

In *Cason* v. *Dale*, Lord Chancellor Thurlow held upon the "Statute of Frauds," which requires that a will of lands shall be subscribed by the witnesses in the *presence* of the testator, that a will was well executed where a lady, who made it, having signed it in an attorney's office, got into her carriage, and the carriage was accidentally backed by the coachman opposite to the window of the office, so that if she had been inclined, she might have let down the glass of the carriage, and seen the witnesses subscribe the will.‡

* 1 Brown, 96. † Brown's Parl. Cas. ii. 211.

‡ 1 Brown, 39.; Dickens, 586. But it is necessary that the testator should be in such a position as that, by possibility, he may have seen the witnesses sign the will, if so disposed, *Doe* v. *Manifold*, 1 Maule & Selw. 294.; although if he might see them from any one part of a room in which he was, and there be

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In *Jones* v. *Morgan* *, in which the industry of Mr. Hargrave may be pretty clearly traced, the Chancellor obtained great glory by overturning a decision of Lord Hardwicke, and holding that the same construction is to be given to limitations in wills of trusts and legal estates. He likewise delivered a very elaborate judgment in *Pultney* v. *Earl of Darlington* †, (which could hardly have been composed by Hargrave, for he was counsel in the cause,) establishing the doctrine now recognised, that where either land is directed to be converted into money, or money to be laid out in land — from the moment the direction might have been executed the property receives the impression either of personalty or realty, with all the incidents of either estate. This case being brought before the House of Lords by appeal, the decree was affirmed.

Money land and land money.

Origin of the fortune of Lord Eldon.

Thurlow's decision in *Ackroyd* v. *Smithson* ‡ was the foundation of Lord Eldon's fortune at the bar, and may be said to have made him Lord Chancellor. A testator ordered his real and personal property to be sold, and the fund to be divided among certain legatees. Two of them died in his lifetime. The question was, what was to become of their shares? Sir Thomas Sewell, M.R., held against the argument of Mr. Scott, who, after being above a year briefless, had a guinea brief for the heir at law, that the whole should be distributed among the surviving legatees. Upon an appeal brought by other parties, Mr. Scott had another guinea brief to consent, on the part of the heir at law, to an affirmance; but having a strong opinion that he was right, he argued the case so zealously and ably, that Thurlow was much struck with the manner of the unknown counsel; and, after high compliments to him, reversed the decree, — deciding that the shares of the deceased legatees were lapsed legacies, and that so much of them as arose out of the real estate should go to the heir at law. Lord Eldon, in relating the story, used to add, "As I left the Hall a

no evidence in what part of the room he was placed, it will be presumed that he was where he might have seen the witnesses *Winchelsea* v. *Wauchope*, 3 Russ. 444.

* 1 Brown, 206. † Ib. 223. ‡ Ib. 503.

respectable solicitor, of the name of Forster, came up, touched me on the shoulder, and said, '*Young man, you have cut your bread and butter*,' or '*Your bread and butter is cut for life*.'" And business thenceforth flowed in upon him, although, till after another lucky hit, he still desired to become Recorder of Newcastle, and to practise as a provincial counsel.*

Erroneous decision of Thurlow in Newman *v.* Wallis.

In *Newman* v. *Wallis* †, our Chancellor most unaccountably held, with great positiveness, that where a plaintiff claims an estate as an heir at law, and prays a discovery, it is not a good plea *that he is not heir at law*; but in the subsequent case of *Hall* v. *Noyes* ‡, he was driven to retract this opinion, and it is now fully settled that such a plea is good, although a defendant cannot, by a plea denying the principal fact, evade a discovery of the collateral facts connected with it.

Lady Strathmore *v.* Bowes

In the *Countess of Strathmore* v. *Bowes* §, where the Lady had settled all her property to her separate use, meaning to marry one man, and then, by a stratagem, was induced to marry another who was ignorant of the settlement, Thurlow established the settlement against the husband, observing in his characteristic manner: — "As to the morality of the transaction, I shall say nothing. They seem to have been pretty well matched. Marriage, in general, seems to have been Lady Strathmore's object; she was disposed to marry any body, so that at the same time she might keep her fortune to herself. But the question is, has there been a fraud upon the husband? It is impossible for a man marrying in the manner Bowes did to come into Equity and talk of fraud.

First Opera House case.

*Ex parte* O'Reilly ‖ was the first of a long string of opera-house cases, which have perplexed Chancellors ever since. The Italian Opera House, in the Haymarket, having been burnt down, a patent for thirty-one years had been granted to the petitioner to enable him to build a new theatre upon the site of Leicester-house, in Leicester Square, and the

* Twiss's Life of Eldon, i. 117.
† 2 Brown, 143.
‡ 3 Brown, 489.
§ 1 Vesey, Jun. 22.
‖ Ib. 112.

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question was, whether the Great Seal should be put to this patent? The grant was opposed by the patentees of all the other theatres, and of incumbrancers and others who had an interest in them. After a hearing of four days, Thurlow said: — "All parties seem to agree that an opera house is a proper establishment in this country, but you will not expect me to determine which of these plans is the best. My office is to see that the King is not deceived, and that he does not part with any authority which he ought to retain. Many considerations require that public establishments of this nature should be in the hands of the King. In the time of James I., as in the time of Queen Elizabeth, masques and such diversions were under the direction of the Crown — executed partly by the Lord Chamberlain, but more immediately by the Master of the Revels. On the same notion the patent was granted by Charles II. to Killigrew and Davenant, and by Queen Anne to Collier and Sir Richard Steele. But this patent is bad, as it contains covenants with the Lord Chamberlain, and it does not sufficiently connect the grant with the property. It is calculated to create innumerable law suits. I should soon be obliged to direct the Master to take the management of the opera house into his own hands — a task for which, I may venture to say, all the masters, notwithstanding their great learning and experience as officers of this Court, are as unfit as myself. Dismissing the petition, I shall make a fit representation on the subject to his Majesty, who, I am sure, will do justice to the parties and to the public."

A written judgment delivered by Thurlow, supposed to be the composition of Hargrave.

Thurlow generally disdained to resort to the practice now very common, and found highly beneficial, of delivering written judgments; but I find one judgment, which the Reporter says, "His Lordship having read, gave it to me," — and I do very much suspect that it is the composition of his "Devil," for the style of it is very quiet and moderate, and it enters a good deal into the civil law. The case is *Scott* v. *Tyler*, in which the important question arose, whether a condition annexed to a legacy, "that the legatee shall not marry without the consent of her mother," be void, as being in re-

straint of marriage, so that the legacy shall be considered absolute? "To support the affirmative," he said, "innumerable decisions of this court were quoted; but the cases are so short, and the dicta so general, as to afford me no distinct view of the principle upon which the rule is laid down, or, consequently, of the extent of the rule, or of the nature of the exceptions to which its own principle makes it liable." Having given the history of the decisions on the subject in this country, and stated how it is viewed by the canon law, he proceeds: "By the civil law the provision of a child was considered a debt of nature, the payment of which the prætor would enforce; insomuch, that a will was regarded as *inofficious* by which the child was disinherited without just cause. By the positive institutions of that law, it was also declared, *Si quis cælibatûs, vel viduitatis conditionem hæredi, legatoriove injunxerit; hæres, legatoriusve è conditione liberi sunto; neque eo minus delatam hæreditatem, legatumve, ex hac lege, consequantur.* In ampliation of this law, it seems to have been well settled in all times, that if, instead of creating a condition absolutely enjoining celibacy or widowhood, the matter be referred to the advice or discretion of another, particularly an interested person, it is deemed a fraud on the law, and treated accordingly; that is, the condition so imposed is holden for void. On the other hand, the ancient rule of the civil law has suffered much limitation in descending to us. The case of widowhood is altogether excepted by the NOVELS; and injunctions to keep that state are made lawful conditions. So is every condition which does not directly or indirectly import an absolute injunction to celibacy. Therefore, an injunction to ask consent, or not to marry a widow, is not unlawful. A condition to marry or not to marry Titius or Mœvia is good, for this reason that it implies no general restraint; besides, in the first case, it seems to have in view a bounty to Titius or Mœvia. In like manner, the injunction which prescribes due ceremonies, and the place of marriage, is a lawful condition, and is not understood as operating the general prohibition of marriage. Still more is a condition good, which only limits the time to twenty-one, or any other rea-

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sonable age, provided this be not evasively used as a covered purpose to restrain marriage generally." After proceeding in this tone at great length, — without abusing any body, or uttering any thing approaching to imprecation,— he dryly decides, that the young lady, having married at eighteen without her mother's consent, was not entitled to the legacy. Perhaps, in the delivery, a few strong expletives were interpolated, to avoid the suspicion that the real author was the meek and placid Hargrave.*

Complaints of delays in the Court of Chancery.

In Thurlow's time there were heavy complaints of delays in Chancery. These, no doubt, arose partly from the peculiar nature of equity suits, which often being between a multiplicity of parties, and depending on complicated inquiries — are not capable of being rapidly settled like a single issue of fact in an action at law, — but there seems reason to think that arrears accumulated from the want of industry and exertion on the part of the Judge. He was rather pleased to be called away to Cabinets and to the House of Lords, and he would not make that sacrifice of time out of Court to the consideration of pending cases without which no Judge can do justice to himself or the suitors. He went on uncomfortably with his Master of the Rolls, except for the short time that Sir Lloyd Kenyon held that office; he was at variance with Sir Thomas Sewell, and he refused contemptuously to co-operate with Pepper Arden, whose appointment he had strenuously opposed, — saying to Mr. Pitt, "I care not whom the devil you appoint, so that he does not throw his own damned wallet on my shoulders, instead of lightening my burthen."

Lord Thurlow's decisions in the House of Lords.

To finish the sketch of Thurlow as a Judge, it may be convenient to state here that he gave considerable satisfaction in disposing of writs of error and appeals in the House of Lords. In all English cases, he summoned the Judges, and was guided by their opinion. The Scotch cases sometimes puzzled him, as he was neither a great feudalist nor civilian, but his own practice in Scotch appeals when at the bar had ren-

* 2 Dickens, 712.

dered him tolerably familiar with the procedure of the Court of Session; after the able arguments at the bar, he could generally guess at the conclusion with considerable confidence; and he had always in reserve the comfortable resource of affirming without giving any reasons.

His famous decision in Bruce *v.* Bruce, laying down the rule with respect to domicile and the succession to personal property.

The most important case which the House decided by his advice, was *Bruce* v. *Bruce;* in which Major Bruce, a son of the famous Abyssinian traveller, having been born in Scotland, and having died in India in the service of the East India Company, the question arose by what law the succession to his personal property, which was partly in India and partly in England, was to be governed? The Court of Session decided, that the law of England should prevail as the *lex loci rei sitæ.* Lord Thurlow was of opinion that the judgment was right—but only on the ground that the intestate had died *domiciled* in India. When he agreed with the decision of the Court below, he had hitherto simply declared that the judgment was affirmed. On this occasion, however, he spoke as follows: "As I have no doubt that the decree ought to be affirmed, I would not have troubled your Lordships by delivering my reasons, had I not been pressed with some anxiety from the bar, that if there was to be an affirmance, the grounds of the determination should be stated,—to prevent its being understood that the whole doctrine laid down by the Judges of the Court of Session had the sanction of this House. The true ground upon which the cause turns is the Indian domicile. The deceased was born in Scotland; but a person's origin is only one circumstance to be regarded in considering by what law the succession to his personal property is to be regulated. A person being at a place is, *primâ facie,* evidence that he is domiciled at that place. It may be rebutted, no doubt. A person may be travelling; on a visit; he may be there for a time, on account of health or business. A soldier may be ordered to Flanders, and an ambassador may be sent to Madrid, where they may remain many months; England is still their domicile or home. But if a British man settles as a merchant abroad, and carries on business there, enjoying the privileges of the place, and dies there, his original domicile is gone; although, had he survived, he might possibly have

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returned to end his days in his native country. Let it be granted, that Major Bruce meant to return to Scotland; he then meant to change his domicile, but he died before actually changing it. All the discussion we have had respecting the *lex loci rei sitæ* is immaterial. Personal property, in point of law, has no locality; and, in case of the decease of the owner, must go wherever, in point of fact, situate, according to the law of the country where he had his domicile. To say that the *lex loci rei sitæ* is to govern the succession to personal as it does to real property, the *domicilium* of the deceased being without contradiction in another country, is a gross misapplication of the rules of the civil law and *jus gentium;* though the law of Scotland, on this point, is constantly asserted to be founded upon them."*

Thurlow takes his seat in the House of Lords.

Thurlow took his seat in the House of Lords rather irregularly on the 14th of July, 1778,—to which day parliament had been prorogued at the conclusion of the preceding session. The Houses now met not for the despatch of business, but only to be again prorogued; and, without a speech from the throne stating the causes of the summons, I doubt whether any business whatever can properly be done. Perhaps Thurlow ought to have merely occupied the woolsack as Speaker—but the Journal of this day contains the following entry: "The Lord Viscount Weymouth signified to the House that his Majesty had been pleased to create Edward Thurlow, Esq., Lord High Chancellor of Great Britain, by the style and title of Baron Thurlow, of Ashfield, in the county of Suffolk: whereupon his Lordship, taking in his hand the purse with the Great Seal, retired to the lower end of the House, and, having there put on his robes, was introduced between the Lord Osborne and Lord Amherst, also in their robes; the Yeoman Usher of the Black Rod, Clarencieux King at Arms (who in the absence of Garter officiated on this occasion) in his coat of arms, carrying his Lordship's patent (which he delivered to him at the steps before the throne), and the Earl of Clarendon (who officiated in the

* Robertson's Law of Personal Succession, 121. A still more important case from Scotland, before Lord Thurlow, on the conflict of laws, was *Hog* v. *Lashley* (ib. 126.); but as he simply affirmed, without saying a word upon any of the important questions which it involved, I must reluctantly pass it over without further notice.

ceremony in the absence of the Lord Great Chamberlain of England) preceding. His Lordship (after three obeisances) laid down his letters patent upon the chair of state, and from thence took and delivered them to the clerk, who read the same at the table," &c. The entry goes on to state the writ of summons, the taking of the oaths, &c., and that his Lordship "was afterwards placed on the lower end of the Baron's bench, and from thence went to the upper end of the Earl's bench, and sat there as Lord Chancellor, and then his Lordship returned to the woolsack. Clarencieux King at Arms delivered in at the table his Lordship's pedigree pursuant to the standing order."

Dec. 7. 1778.

The prorogation then took place. At the opening of the Session of parliament, on the 26th of November following, the Lord Chancellor on his knee delivered to George III. the royal speech, announcing that France had gone to war, and was assisting the revolted colonies in America.* He abstained from taking part in the debate which followed upon the address; but on Lord Rockingham's motion a few days after, respecting the proclamation issued by the English Commissioners in America, he made his maiden speech as a Peer, and showed that he had not changed his disposition with his rank. He at once poured red hot shot into the whole of the opposition. He began with Hinchcliffe, Bishop of Peterborough, who had inveighed against the employment of savages in carrying on the war in America, had objected to an item in the army extraordinaries, "scalping-knivs and crucifixes for the Indians,"—had declared that if such was the Christianity we were to teach them, it would be better that they should never hear of the name of Christ,—and was understood to lament the "fruitless desolation" which such measures produced.—*Lord Chancellor.* "The Right Reverend Prelate talks of 'fruitless desolation,'—an expression which carries no meaning, and is neither sense nor grammar. It is not supported by any figure of speech, or by any logic, or even by any vulgarism that I ever heard of. 'Fruitless desolation,' my Lords, is rank nonsense. I was

His furious maiden speech.

* 19 Parl. Hist. 1277.

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not aware before that 'desolation' might be 'fruitful.' To negative what is not to be found in nature, and what the imagination cannot conceive, is a species of oratory—not only incongruous, but so nonsensical, that it admits of no answer."—He next addressed himself to an observation of the Duke of Grafton, who had said that ministers carried their measures by corruption: "this," he said, "was well calculated for the temporary purpose of debate, as it required no proof, and admitted of no refutation; and this was all that was intended by it; but he hoped that it would have a contrary effect, and that an impartial nation would honour and respect those against whom nothing could be brought, except such indiscriminate and ill-founded charges." He then attacked the Duke of Richmond and Lord Shelburne with equal acrimony, and concluded by declaring that "having in vain appealed to the reason and good sense of America, the only course was to endeavour to influence by their fears those who could not be wrought upon by the nobler principles of affection, generosity, or gratitude." The Bishop of Peterborough explaining, said, the expression he had used was "fruitless evils," not "fruitless desolation," although he contended that a desolation from which no good consequences was ever promised or expected, might well be termed a "fruitless desolation."—The *Lord Chancellor*. "I beg pardon of the Right Reverend Prelate, if I have mistaken his words. But, my Lords, I am equally at a loss to know what sort of 'evils' are 'fruitful'—except of evil. Are some evils productive of good? Let the Right Reverend Prelate more distinctly classify his evils; for at present I am at a loss to distinguish between evils that are fruitless and evils that are fruitful." He had an explanation almost equally uncourteous with Lord Shelburne; but he received a calm and dignified rebuke from Lord Camden, who asserted the import of the proclamation in question to be "We have tried our strength; we find ourselves incapable of conquest, and as we can't subdue we are determined to destroy." As yet the opposition in the Lords could only muster 37 to 71.*

* 20 Parl. Hist. 1—46.

His demeanour on the woolsack.

Thurlow spoke several times on the bill for allowing Keppel to be tried by a naval court-martial on shore,—allowing it to pass pretty quietly after a few sarcasms on the admiral and his supporters.* He then caused considerable dissatisfaction in the House, by at first refusing to put a motion which had been regularly made for the erection of a bar between the woolsack and the steps of the throne,—on the ground that the object of it was to accommodate members of the House of Commons,—which was contrary to the standing order for the exclusion of strangers;—but he was forced to put it, and to negative it by the ministerial majority.† On other occasions, about this time, his manner gave offence to several Peers, and by way of apology he declared "that he never presumed to rise and control the sense of the House, but in instances in which the form of their proceedings was about to be departed from."‡

Thurlow about to lose his authority in the House, when he is attacked by the Duke of Richmond.

He was becoming highly unpopular, and as his demeanour on the woolsack was very much like that of Lord Chancellor Jeffreys,—if a proper course had been pursued to check him, he might have been put down as effectually;—but, luckily for him, instead of being reprimanded for his arrogant manners, he was taunted with his mean birth,—an opportunity was offered to him, which he daringly and dexterously improved, of exalting himself,—and the suppressed rebellion ended in his establishing a permanent tyranny over the whole body of the Peerage.

Butler's account of this scene. June, 1779.

We have a very lively account of this scene from an eye-witness. "At times," says Mr. Butler in his Reminiscences, "Lord Thurlow was superlatively great. It was the good fortune of the Reminiscent to hear his celebrated reply to the Duke of Grafton during the inquiry into Lord Sandwich's administration of Greenwich Hospital. His Grace's action and delivery, when he addressed the House, were singularly dignified and graceful; but his matter was not equal to his manner. He reproached Lord Thurlow with his plebeian extraction and his recent admission into the Peerage: particular circumstances caused Lord Thurlow's reply to make a

* 20 Parl. Hist. 94, 95. 102. 105. 110. † Ib. 470. 473. ‡ Ib. 588.

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deep impression on the Reminiscent. His Lordship had spoken too often, and began to be heard with a civil but visible impatience.* Under these circumstances he was attacked in the manner we have mentioned. He rose from the woolsack, and advanced slowly to the place from which the Chancellor generally addresses the House †, then fixing on the Duke the look of Jove when he grasped the thunder, 'I am amazed,' he said in a loud tone of voice, 'at the attack the noble Duke has made on me. Yet, my Lords,' considerably raising his voice, 'I am amazed at his Grace's speech. The noble Duke cannot look before him, behind him, or on either side of him, without seeing some noble Peer who owes his seat in this House to successful exertions in the profession to which I belong. Does he not feel that it is as honourable to owe it to these, as to being the accident of an accident? To all these noble Lords the language of the noble Duke is as applicable and as insulting as it is to myself. But I don't fear to meet it single and alone. No one venerates the Peerage more than I do;—but, my Lords, I must say, that the Peerage solicited me, not I the Peerage. Nay, more, I can say, and will say, that as a Peer of Parliament, as Speaker of this right honourable House, as Keeper of the Great Seal, as guardian of his Majesty's conscience, as Lord High Chancellor of England, nay, even in that character alone, in which the noble Duke would think it an affront to be considered—as a MAN—I am at this moment as respectable,—I beg leave to add,—I am at this moment as much respected—as the proudest Peer I now look down upon.' The effect of this speech, both within the walls of Parliament and out of them, was prodigious. It gave Lord Thurlow an ascendency in the House which no Chancellor had ever possessed: it invested him in public opinion with a character of independence and honour; and this, though he was ever on the unpopular side in politics, made him always popular with the people." ‡

*Speech against the Duke of Richmond.*

*Thurlow becomes the tyrant of the House of Peers.*

I myself have seen striking instances in a public assembly

* I conjecture that he had given umbrage by his dictatorial tone much more than by the frequency of his speeches.

† The top of the Duke's bench.

‡ Reminisc. i. 142.

of the cowardice of brave men, who forget that before an effort of moral courage arrogance quails. From this time every Peer shrunk from the risk of any encounter with Thurlow, and he ruled the House with a rod of iron — saying and doing what he pleased, and treating his colleagues with very little more courtesy than his opponents. He was soon described as,

> "That rugged Thurlow, who, with silent scowl,
> In surly mood at friend and foe would growl."

Thurlow's ironical defence of the bill to punish adultery.

The Parliamentary History says, that on the next measure which was brought forward, "the Lord Chancellor spoke with peculiar feeling, force, and argument;" but I cannot help suspecting that his speech was an example of grave irony, and that in his heart he was *laughing*, and wished the discerning to *know that he was laughing*, at the suspicious claims to high blood of some of those who despised the descendant of the "Carrier." This was Bishop Barrington's bill "for the more effectual discouragement of the crime of Adultery." A Howard, — the Earl of Carlisle, — having ably opposed it on the ground that adultery, though a deadly sin, was not a subject for criminal legislation, — he was answered with great seeming warmth by Lord Thurlow, who had not only been noted for youthful profligacy, but, now the first magistrate under the Crown, and Keeper (as he boasted) of the King's conscience, was openly living with a mistress, by whom he had a family of children. He said, "the matter immediately before the House was, whether or no they would take into consideration a method for more effectually preventing the crime of adultery? If they rejected the bill, they pronounced in form that they were not disposed to put any restraint at all upon this abominable practice. The plain question was, 'Do you, or do you not, think it worth your while to interpose by some method for the prevention of a crime that not only subverts domestic tranquillity, but has a tendency, by contaminating the blood of illustrious families, to affect the welfare of the nation in its dearest interests?' The bill was for the '*protection*' of every husband and father in the kingdom; *but it concerned their Lordships more than any*

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*other order in the state.* He begged the House to recollect that the purity of the blood of their descendants was and must necessarily be an essential consideration in the breasts of all Peers. Every attempt to preserve the descent of Peers unstained merited their immediate attention: for his part, he declared he saw *the importance of the bill to the Peerage* so clearly, that if he had the blood of forty generations of nobility flowing in his veins, he could not be more anxious to procure for it that assent which it deserved from their Lordships." * No puritan could have more vehemently supported the ordinance passed in the time of the Commonwealth, by which fornication was made felony, and on a second conviction was to be punished with death. "A knavish speech sleeps in a foolish ear," and this *persiflage* of the Lord Chancellor was taken in good earnest by a large majority of their Lordships: but the bill which they passed was thrown out by the Commons — where the professed "Protection" was considered less necessary.†

His opposition to Lord Shelburne's resolution in favour of Irish commerce.

Some alarm being excited by the discontents of Ireland, which soon after led to the assertion of independence by an armed force, Lord Shelburne brought forward certain propositions for repealing the laws which restricted the intercourse between the two islands, so that both might have a common interest in prosecuting commerce. Thurlow strongly opposed what he called "a dangerous innovation;" and his colleagues, showing some symptoms of giving way, he declared "that though he did not wish in general to take the lead, nor pretend to determine on matters of state, which were foreign to his studies and habits of life, on the present occasion he would act for himself, and meet the motion with a direct negative." This course was adopted, and he had a majority of 61 to 32.‡

He attacks Lord Rockingham's mo-

At the opening of the session, in Nov. 1779, after the continuing disasters of the war, the Marquis of Rockingham, with good reason, and at all events regularly and constitu-

* 20 Parl. Hist. 594.

† 20 Parl. Hist. 601. Its absurdities were forcibly pointed out by Charles Fox, who, in allusion to Thurlow's indecent sarcasm on the "Peeresses," pointed out the extreme hardship to which the female sex were exposed in not being allowed to sit in parliament, and having no representatives there.

‡ 20 Parl. Hist. 675.

tionally, having moved an amendment to the address, praying for a change of councils and councillors, it was thus opposed by the Lord Chancellor: "Allowing all the suggestions of the noble Marquis to be as true as they are unfounded, would it be just — would it be fair, either in point of form or fact, to condemn, without hearing or inquiring what the parties accused have to say in defence or extenuation? I do not rise as an advocate for any man, or description of men — much less for the persons supposed to compose the present administration;—but I stand up for the honour of the House. If ministers have acted improperly, injudiciously, corruptly, or wickedly, the very presumption that they have done so entitles them to claim a trial. I will suppose they are culprits. That is enough for my argument; they are entitled to the benefit of the laws. The higher the charge,—the heavier the punishment, — the more caution is required in bringing home guilt to the accused. But to come by a side-wind — without notice — without evidence, and at once to condemn, — is a mode of proceeding which I cannot sanction. It is an outrage on the constitution; it is contrary to candour — to law — to truth, and to every requisite of substantial justice." Lord Camden made a forcible reply to this "novel logic," but the amendment was negatived by a majority of 82 to 41.*

tion for an address praying for a change of ministers as unconstitutional.

He opposes all economical reforms. Apr. 1780.

The Chancellor most resolutely set his face against all the economical and constitutional reforms which Burke, Dunning, and the Whigs were now able to carry through the lower House, where upon such subjects they had a majority. But their bills soon received the *coup de grâce* on reaching the House of Lords. The bill to disqualify government contractors from sitting in the House of Commons, although it had passed there almost unanimously, he threw out by a majority of 92 to 51, saying that "the fact that the bill had in its favour the general wishes of the people, was worth just so much as it would pass for in their Lordship's estimation."†

May, 1780. He ably defends the employ-

There being a motion in the House of Lords against the employment of the military to put down Lord George Gordon's riots, the Chancellor, in a speech not confined to assertion

* 20 Parl. Hist. 1023—1092.

† Ib. 433.

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ment of the military to put down Lord George Gordon's riots.

June, 1780.

and vituperation, but containing an unusual display of reasoning, legal learning, and historical research, proved, in a very able and satisfactory manner, that citizens with arms in their hands still enjoy the rights, and are liable to the duties of citizens, and are bound, like other citizens, to assist in preserving or restoring the public tranquillity. He likewise gained considerable credit with the judicious for his continued support of Sir George Savile's bill to relax the penal laws against Roman Catholics, although so little progress had the Peers yet made in the school of religious liberty, that, to please them, he said "he was by no means prepared to carry toleration so far as Mr. Locke;"—and while Roman Catholics were to be permitted to teach music and dancing, he introduced a clause to prohibit them from keeping boarding-schools, so that they might never have Protestant children under their management.*

Nov. 1780. Challenge to fight between two Peers, voted a breach of privilege.

Soon after, a private affair of honour, wholly unconnected with any parliamentary proceeding, was brought before the House by the Chancellor, as a breach of privilege. The Earl of Pomfret, erroneously supposing that a gamekeeper, whom he had discharged, had been countenanced by the Duke of Grafton, wrote some very intemperate letters to his Grace, and insisted on fighting him either with sword or pistol. Thurlow, on the rumour of what had happened, moved that they should attend, in their places, in the House; and both parties being heard, it was resolved that the behaviour of the Duke of Grafton had been highly laudable and meritorious; and Lord Pomfret being made to kneel at the bar, was informed that he had been guilty of "a high contempt of the House." Afterwards the Lord Chancellor, with three-cocked hat on head, administered to him a thundering reprimand.† Nowadays, I conceive, the House would refuse to take cognizance of such a quarrel. The supposed breach of privilege would be the same if the challenger were a commoner, although this circumstance would render the interference more preposterous.

His speech on the rupture with Holland.

In the beginning of the year 1781, Lord Thurlow spoke several times, and at great length, on the rupture which then

* 22 Parl. Hist. 759. 764.

† Ib. 865, 866.

took place with Holland. The question being one of public law upon the construction of treaties, he strangely said that "his pursuits and habits by no means fitted him for such an undertaking,—so that he could only treat the subject with the portion of common sense and experience Providence had endued him with, and familiarise it so as to bring it on a level with his own poor understanding." Perhaps he maliciously insinuated, that to make himself intelligible to his audience, it was necessary he should adapt his discourse to the meanest understandings.* But the truth is, that he himself had read very little of the law of nations; that he was very little acquainted with the rights of peace and war; and that his boasted superiority was in pretension, not in knowledge.†

He defends the execution of a British officer taken fighting with the Americans, &c.

He succeeded better in justifying the military execution of Colonel Haynes, a British officer taken fighting for the Americans‡; and in crushing an attempt to censure Lord George Germaine's elevation to the Peerage, by the title of Viscount Sackville, — when he first refused to put the question, and afterwards denounced as unjust the general orders issued by the late King against that officer after his court-martial.§

The elevation of Lord George Germaine to the Peerage.

Public disasters, and approaching fall of Lord North.

But Lord North's administration was now in the agonies of dissolution; and Thurlow began to coquet a little with the opposition.‖ Lord Cornwallis had capitulated,—America was lost, — hostilities had commenced with France, Spain, and Holland,—Gibraltar was besieged,—the fleets of the enemy insulted our shores,—Ireland was on the verge of rebellion, — Russia, and the northern powers, under pretence of an armed neutrality, were combined against our naval rights, and were respectively planning the seizure of a portion of our dominions, —and the utter overthrow of the British empire was anticipated. Notwithstanding the King's firm adherence to the present sys-

* A remarkably acute friend of mine formerly at the bar,—the Judges having retired for a few minutes in the midst of his argument, in which, from their interruptions and objections, he did not seem likely to be successful,— went out of Court too, and on his return stated that he had been drinking a pot of porter. Being asked whether he was not afraid that this beverage might dull his intellect? "That is exactly my object," said he—"to bring me down, if possible, to the level of their Lordships."

† 22 Parl. Hist. 1007—1078. ‡ Ib. 976. § Ib. 1000. 1021.

‖ See his speeches on the Government Almanack Bill (22 Parl. Hist. 542.), and on the Address of Thanks (Ib. 672.).

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tem, a change of ministers was considered inevitable. The Whigs were becoming stronger in the House of Commons on every division; they had been lately strengthened by the accession of the brilliant talents of Pitt the younger, and of Sheridan; and, what was of even still greater importance, the nation, though disposed to make a gallant struggle against the Continental States, which basely sought to take advantage of our misfortunes, was heartily sick of the colonial war, and was willing to acknowledge American independence. Thurlow's official career being supposed to be drawing rapidly to a close, the lawyers began to speculate which Whig lawyer would be his successor, and how the surly Ex-chancellor would amuse and comfort himself in retirement? That he, who more zealously and uncompromisingly than any other member of the Tory government had supported all its most obnoxious acts, and more scornfully resisted all the popular measures of the opposition, should retain the Great Seal, never entered the imagination of any human being except Thurlow himself and the King. Which of the two first conceived the bright thought must for ever remain unknown. When the ministerial vessel did go to pieces, Thurlow was the *tabula in naufragio* — the plank to which his Majesty eagerly clung.

Speculations as to Thurlow's successor.

Thurlow himself remains Chancellor. March, 1782.

# CHAPTER CLVIII.

CONTINUATION OF THE LIFE OF LORD THURLOW TILL HE WAS DEPRIVED OF THE GREAT SEAL ON THE FORMATION OF THE COALITION MINISTRY.

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Blunder committed in allowing Thurlow to be Chancellor under the Rockingham administration.

I AM more and more at a loss to account for Lord Rockingham, Lord Shelburne, and Mr. Fox agreeing to sit in the Cabinet with the man who had so violently denounced their opinions on most important questions of foreign and domestic policy which were still pending. The great "Coalition" between the two antagonist parties, which soon after so much shocked mankind, in reality did not involve any such incongruity as this adoption of the most odious member of the late government, without any renunciation of his principles. To do *him* justice, it should ever be remembered that, instead of saying "*Peccavi*," he continued to glory in all that he had hitherto done and said, while proclaiming the Rockinghams and the Shelburnes as enemies to their country. The proposed measures on which the new administration was founded, were four: 1. An offer to America of unconditional independence as the basis of a negotiation for peace. 2. Economical reform as proposed in Mr. Burke's bill. 3. Repression of the undue influence of the Crown in the House of Commons, by disqualifying contractors to sit there, and by preventing revenue officers from voting at parliamentary elections. 4. The pacification of Ireland by a renunciation of the authority of the British parliament to legislate for that country. The subsequent fusion of Whigs and Tories was plausibly (I think not effectually) defended by the observation that, when it took place, all the questions on which Lord North and Mr. Fox had differed so widely were settled, and that there was nothing to prevent their practical co-operation for the future. But the four great measures which I have specified were still to be brought forward by the government, and Thurlow had often declared,

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and was still ready to declare, that they were all unconstitutional and pernicious. The King, upon a proper representation, could not have insisted (as he is said to have done) on the retention of Thurlow as the condition of his giving his consent to the introduction of Mr. Fox into the Cabinet; for although he might have executed his threat of abdicating, and retiring to Hanover, he could not at that hour have remained on the throne of England, indulging personal partialities and antipathies in the choice of his ministers.

Mr. Adolphus, in his History of George III., says, "Mr. Fox, some time before the overthrow of the late cabinet, acknowledged that his adherents detested Lord Thurlow's sentiments on the constitution; but added, they did not mean to proscribe him."* Fox, however, was then speaking of the Lord Advocate of Scotland, not of Lord Thurlow; and he declared that "they would proscribe no man of any principles in the present dreadful moment, but *the five or six men who had been the confidential advisers of his Majesty in all the measures that had brought about the present calamities.*"

Explanation of this fact.

I can only account for the wishes of the King prevailing by supposing the existence of jealousies, rivalries, and bickerings among the Whigs themselves as to the disposal of the Great Seal. It is certainly much to be deplored if the apprehensions of the Rockinghams, that the Shelburnes would be too much aggrandised by the appointment of Dunning, deprived him of the fair reward of his exertions, and the public of the benefit of his services. From the time that he accepted the Duchy of Lancaster and a Peerage, he sunk into insignificance. He had a seat in the cabinet, but that seldom gives much weight without important official functions and a great department to administer.

Thurlow in the Rockingham cabinet.

How Thurlow comported himself when he met his new colleagues at cabinets to concert their proceedings in parliament, we are left to conjecture. It must now have been very convenient for him to practise the habit he is said to have acquired of going to sleep, or pretending to go to sleep,

* Vol. iii. 349.

after dinner, during discussions on which the safety of the state depended. We know that when the measures of Government were brought forward in parliament, he opposed them without any reserve.

The Lord Chancellor leader of the opposition.

During the short existence of the Rockingham administration, the Lord Chancellor might truly be considered the leader of "his Majesty's opposition" in the House of Lords. He knew the *secret*, which the King was at no pains to conceal, and which was loudly proclaimed by all the "King's friends," that the administration did not possess his Majesty's confidence.* His object, therefore, was to take every opportunity of disparaging it, and, above all, of sowing dissension between the different sections of the liberal party of which it was composed.

Mr. W. Pitt's motion for parliamentary reform.

They lost a little popularity by the defeat of the motion for a reform in the representation of the people in parliament, made by their partisan, Mr. W. Pitt, then a young lawyer going the Western Circuit. This measure was supported by the Shelburne Whigs, but discouraged by the Rockinghams, who, while they were economical reformers, professed great reluctance to touch the constitution of the House of Commons.

To evince the sincerity of their professions while in opposition, and to recover their character, Ministers re-introduced, and both their sections eagerly supported, the two bills which Thurlow had formerly thrown out in the Lords, for the disqualification of contractors as representatives, and of revenue officers as electors. The bills passed the Commons with acclamation, but when they came before the upper House, although the existence of the Government was declared to depend upon them, he attacked them with unabated violence. The second reading of the "Contractors' Bill" having taken place without discussion, the Lord Chancellor left the woolsack, and observed, that "he had expected that, before the bill reached that stage, some noble Lord would

May, 1782. Thurlow opposes the "Contractors' Bill."

* "The King declared that, in the whole course of his reign, this was the only administration which had not possessed his confidence."—*Adolph.* iii. 373. This statement is said to be from "private information," and his Majesty often praised the accuracy of this historian. The avowal is supposed to have been made by his Majesty after the administration was dissolved; but from its formation, the fact had been notorious to all the world.

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have had the goodness to explain to the House the principles on which it rested, and the necessity for introducing it at this particular juncture. The bill trenching on the ancient constitution of this realm, he considered it highly exceptionable in itself; and it was still more exceptionable in its form, from the very singular, imperfect, careless, and inexplicable style and phrase in which it was worded. He would not, by applying strong epithets to the bill, give it a worse character than it really deserved; but after having perused it with all the attention he was capable of, he could find no milder words in the English language to describe the impression his perusal of it had left upon his mind, than terming it *an attempt to deceive and betray the people.*" *

Having denied that there ever had been any instances of Members of Parliament being corrupted by Ministers through the means of contracts, he asked if no such instance had ever occurred in the worst of times, why pay so bad a compliment to succeeding Ministers as to presume that they will be so much more depraved, so much more abandoned, so lost to all sense of shame, as to be guilty of what their predecessors would have shunned with abhorrence? Why have his Majesty's present Ministers so little confidence in themselves? Why do they believe that they are more corrupt than those they have succeeded? [A noble Lord said,— "No Ministers could be more corrupt than the last."]—*Lord Chancellor.* "Then, my Lords, I am relieved from farther arguing the question; for if there was perfect purity in such matters (as I know there was) with the last Ministers, supposing them to have been corruptly inclined (as I know they were not), the bill is confessedly unnecessary, and it is a mis-

* This reminds me of a Westminster Hall anecdote of Mr. Clarke, leader of the Midland Circuit — a very worthy lawyer of the old school. His client long refusing to agree to refer to arbitration a cause which judge, jury, and counsel wished to get rid of, he at last said to him, "You d—d infernal fool, if you do not immediately follow my Lord's recommendation, I shall be obliged to use *strong language* to you."—Once, in a council of the benchers of Lincoln's Inn, he very conscientiously opposed our calling a Jew to the bar. I tried to point out the hardship to be imposed upon the young gentleman, who had been allowed to keep his terms, and whose prospects in life would thus be suddenly blasted. "Hardship!" said the zealous churchman — "no hardship at all! Let him become a Christian, and be d—d to him!!!"

chievous remedy for an imaginary and impossible evil. It holds out nothing like a reform either in point of economy or influence. I must likewise, in the discharge of my duty, remind your Lordships that two years ago you rejected this very measure when it was proposed in a less exceptionable form. You are bound to act consistently. If you should now, to please the Minister, suddenly wheel round, how are you to surmount the abusive attacks and scurrilous insinuations of anonymous libellers? Such illiberal assassins and scribbling garreteers may now have some colour for their attacks upon your dignity. It behoves your Lordships to act so that you may be able to laugh libellers to scorn, and to defy their malice." He actually divided the House; but this was not yet the time to break up the administration, and he had on his side only 45 against 67—a larger minority, however, than had been ever mustered in the upper House against any measure of Lord North's government.

Thurlow continued a most vexatious opposition to the bill in the committee—where, going through it clause by clause, he denounced it as "a jumble of contradictions." It was there defended by the two new law Lords, Lord Ashburton and Lord Grantley. They both gallantly fleshed their maiden swords in various rencounters with the "blatant beast," who tried to tread them down.

On some of the divisions in the Committee the Ministerial majority was reduced to two votes. The bill was carried. But thenceforth the "King's friends" in both Houses openly declared themselves against the existing government.*

And opposes the "Revenue Officers' Disqualification Bill."

The Chancellor got up a similar opposition to the other government bill for disqualifying revenue officers from voting at parliamentary elections, although Lord Rockingham, in what may be considered a dying speech, deprecated opposition to it, and stated the striking fact that there were no less than seventy boroughs in England in which the return of Members depended chiefly on revenue officers appointed and removable by the Government. On the last division on this Bill, the Chancellor had the mortification to announce

* 22 Parl. Hist. 1356—1382.

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that the *Contents* were 34, and the *Not-contents* (of whom he was one) were 18.*

A.D. 1782. He opposes the bill for disfranchising Cricklade.

Notwithstanding that Mr. Burke and several other leading Members of the Government were hostile to a sweeping measure of parliamentary reform, they concurred with their colleagues in the desire to punish corruption at elections, and the whole party in the House of Commons strongly supported the bill for transferring the franchise of Cricklade to the adjoining "hundreds" on account of the universal bribery proved upon the burgesses. But when the bill came up to the Lords, it likewise was vehemently opposed by the Chancellor. The Duke of Richmond thereupon charged the noble and learned Lord on the woolsack with "opposing indiscriminately every measure of regulation or improvement which was laid before the House." The Lord Chancellor complained of the asperity with which he had been treated by the noble Duke, and said, "he thought it rather a peculiar hardship that his manner—that of a plain man, who studied nothing but to convey his sentiments clearly and intelligibly—should be imputed to him as if arising from a habit of indiscriminate opposition or of intentional rudeness."

He brings down a censure on all law Lords.

Lords Mansfield, Camden, Loughborough, Ashburton, and Grantley, having taken part in the discussion, "Lord Fortescue bewailed the degraded dignity of the House, lowered and tarnished by a profusion of lawyers: it was no longer a house of peers, but a mere court of law, where all the solid honourable principles of truth and justice were shamefully sacrificed to the low pettifogging chicanery and quibbles of Westminster Hall. That once venerable and august assembly now resembled a meeting of attorneys in a Cornish court acting as barristers; the learned Lord on the woolsack seemed fraught with nothing but contradictions and law subtleties and distinctions, and all that." The Chancellor was not to be deterred from his obstructive course by such observations; but notwithstanding all his efforts, the bill was carried.†

He opposes a ministerial address to the Crown.

Again, when a motion was made by the organ of the government in the House of Lords for an address of congratulation to the throne on the great victory obtained by Rodney

* 23 Parl. Hist. 95—101.
† 22 Parl. Hist. 1383—1395.; Adolphus, iii. 363.

over De Grasse in the West Indies, which was stated to be "conducive to an honourable and advantageous peace," Thurlow objected to these words, as containing *a political opinion on the expediency of peace;* and, for the sake of unanimity, they were omitted.*

Death of the Marquis of Rockingham.

The Marquis of Rockingham expired on the 1st of July. On the third of the same month stood an order of the day for the second reading of Mr. Burke's famous bill to reform the Civil List Expenditure — a measure which was highly distasteful to the Court. No arrangement had yet been announced for the appointment of a new premier. The Chancellor was eager to give a blow to that section of the administration which was most hated by himself and his master — the personal adherents of the deceased minister. Therefore, at the sitting of the House, in an abrupt manner, he left the woolsack to make a motion for the purpose of throwing out the bill. After calling their Lordships' attention to its importance, he said, "At this late stage of the session, and with so thin an attendance, it would ill become you hastily to adopt a string of propositions, in themselves very complicated, and in many respects contradictory. But, my Lords, I am surprised to find that the Right Honourable Gentleman who prepared this bill, and who, some years ago, introduced one on somewhat similar principles, has now left out several important offices and places which he formerly represented as peculiarly standing in need of his speculative remedy. One of these offices is occupied by a noble Duke (Richmond) who cannot be anxious to receive its emoluments. He certainly would not suffer any corruption to be practised in any department in which he presides. Whether the ORDINANCE be left out in compliment to his Grace's virtues and talents I will not pretend to decide, but I am sure that the 'Ordinance' and the 'Mint,' and the 'Duchy of Lancaster,' held by the Right Honourable Gentleman's colleagues, are very properly left out, and I could only wish that he had dealt in the same way with other offices which he has included, — some of them the most ancient and illustrious in

Thurlow opposes Mr. Burke's bill for economical reform.

* 23 Parl. Hist. 72.

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the state,—so that to annihilate them was, in fact, an attempt to destroy the constitution." He then started a technical objection, that there being for the protection of their privileges a standing order, passed in the year 1702, which provided, that "no money bill should be allowed to pass containing extraneous enactments," this bill granted a supply to his Majesty of 300,000*l.*, and was a money bill, while it abolished or regulated half of the offices under the Crown. "Therefore," said he, "with all my aversion to the evils which the bill seeks to remedy, I cannot give it my support. There appears to me to be objectionable and absurd matter almost in every clause of it, and I adjure your Lordships to adjourn the consideration of it — more especially, as if you agree, in compliance with the menaces of another branch of the legislature, to send it to a committee, you will sacrifice your standing order, and surrender your dignity." He concluded by moving that the order for the second reading of the bill should be discharged.

Lord Shelburne pretty clearly indicated his expectation (although Thurlow seems not yet to have been aware of the fact), that he was himself to be the minister, and he felt that, without an entire loss of public credit, he could not abandon the bill. He declared "that he joined with the House, and the whole public must join, in deploring the heavy loss the country had experienced in the death of the late Marquis of Rockingham. That great man, however, had by his example obliged whoever should be the minister to do his duty to the public, and had left this bill behind him as a pledge of his wisdom, his integrity, and his zeal, to further the strictest economy in every branch of the public expenditure." The noble Earl then professed himself favourable to parliamentary reform, and to all measures of improvement, but did not say a word in defence of the author of the bill — which might be the reason that Burke a few days after, when his Lordship had actually seized the helm, compared him to Catiline and to Borgia. Thurlow still called for a division on his motion against the bill, but was left in a minority of nine to forty-four.*

* 28 Parl. Hist. 139—147.

Lord Shelburne Prime Minister. Resignation of Mr. Fox and the Rockingham Whigs.

Lord Shelburne being declared first Lord of the Treasury, Mr. Fox, Lord John Cavendish, Mr. Burke, the Duke of Portland, and other Rockingham Whigs resigned. I cannot say that they made a dignified or becoming exit. In the explanations which followed, their leader said he had intended to withdraw before the death of the Marquis of Rockingham; but all the world believed the true reason to be, that Lord Shelburne was appointed to succeed him. It had long been quite clear that Thurlow ought never to have been admitted into Lord Rockingham's cabinet, and that Lord Rockingham ought to have adopted the course pursued by Mr. Pitt in 1792, by asking his Majesty to elect between his first Lord of the Treasury and his Chancellor. At this crisis the retiring ministers should have objected to the retention of Thurlow — not to the promotion of Lord Shelburne. They presented to the nation the spectacle, ever disliked, of a squabble for places, and an unfair attempt to control the discretion of the Sovereign.

Mr. W. Pitt's first introduction to office.

Lord Shelburne was strengthened by the accession of young Pitt, who, for the office of Chancellor of the Exchequer, renounced the profession of the law, the highest honours of which, had he continued in it, he must rapidly have attained. Thurlow joyously consented to continue Chancellor, and the new administration being much less disagreeable to the Court than that of Lord Rockingham, he was much mollified, and gave it his support. Indeed, during Lord Shelburne's ministry, which speedily came to a violent end by the "Coalition," the Chancellor is not recorded to have opposed one Government measure, and in the grand debate on the Preliminaries of Peace he gallantly supported his colleagues.

Thurlow remains Chancellor, and supports the Government.

Feb. 17. 1783. Q. Whether the King can yield up to a foreign state part of the British dominions without the

On this occasion he followed Lord Loughborough, who, having become a Foxite, had in a long and elaborate speech attacked the terms of the treaty, and particularly, in reference to the article agreeing to the cession of the Floridas, denied the power of the Crown, without an act of parliament, to alienate a portion of the British empire, and to transfer the allegiance of British subjects to a foreign state. Thurlow's

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authority of parliament?

assertion that he may.

answer is supposed to have settled that great constitutional question; but I own it seems to me very unsatisfactory, for, as usual, he deals in sarcasm and assertion, not in reasoning or authority, and he does not define or limit the power he contends for — so as to exclude from its exercise the cession of the Isle of Wight, or the garrison of Portsmouth. "My Lords," said he, "I cannot claim your attention on the ground of eloquence and wit. These belong peculiarly to the noble and learned Lord who has so long and ably endeavoured to fascinate your Lordships, and whose skill and address in managing the passions of his auditors are not to be equalled,—and by a man of plain meaning and sober understanding like myself, whose only wish is to discriminate between truth and fiction,—not to be coveted. The noble and learned Lord has thought proper to allege that the royal prerogative does not warrant the alienation in a treaty of peace of territories which were under the allegiance of the crown of England. If this doctrine be true I must acknowledge myself strangely ignorant of the constitution of my country. Till the present day of novelty and miracle, I never heard of such a doctrine. I apprehend, however, that the noble and learned Lord has thrown down the gauntlet on this occasion more from knight-errantry than patriotism, and that he was more inclined to show the House what powers of declamation he possesses in support of hypothetical propositions, than anxious gravely to examine a power wisely lodged in the Crown, the utility, much less the existence, of which has never hitherto been questioned. One would have thought that when a great, experienced, and justly eminent lawyer hazarded an opinion respecting a most important point of the constitution of this country, he would deem it fit to produce proofs from our legal and historical records, or at least that he would attempt to show that the common opinion and consent of Englishmen went with him; but instead of this the noble and learned Lord resorts to the lucubrations and fancies of foreign writers, and gravely refers your Lordships to Swiss authors for an explanation of the prerogatives of the British Crown. For my own part, I at once reject the authority of all foreigners on such a subject.

However full of ingenuity Mr. Vattel or Mr. Puffendorf may be on the law of nations, which cannot be fixed by any solid and permanent rule, I deny their authority, I explode their evidence, when they are brought in to explain to me what may or may not be done by the Sovereign I serve. Speaking from my own judgment, the records of parliament, the annals of the country, I do not think the cession of the Floridas at all a questionable matter. Let the noble and learned Lord bring forward the subject regularly, and I will establish a doctrine clearly contrary to the extraordinary notion now sported by him, or confess my ignorance. I will not combat the noble and learned Lord with vague declamation and oratorical flourishes,—these I contentedly leave to him with the plaudits they are calculated, perhaps intended, to gain,—but with undecorated sense and simple argument. In my opinion, it is safer to stick to the process by which we arrive at the conclusion that two and two make four, than to suffer your understandings to be warped by the fashionable logic which delights in words, and which strives rather to confound what is plain than to unravel what is intricate."*

Marvellous effect of big words.

He might just as well after the manner of Lord Peter, in one sentence have affirmed with an oath that it was so, and uttered an imprecation on all who differed from him.† But this ebullition was thought by their Lordships a very ample answer to the objection, and even Lord Loughborough's friends felt that he had made a false point, and that he was completely put down. We must bear in mind Thurlow's voice and manner, and that "he looked wiser than any man ever was."‡

* 23 Parl. Hist. 430.

† "Look ye, gentlemen," cries Peter in a rage: "to convince you what a couple of blind, positive, ignorant, wilful puppies you are, I will use but this plain argument: but, by G—, it is true, good, natural mutton as any in Leadenhall market; and G— confound you both eternally if you offer to believe otherwise." After this "thundering proof," his Lordship was allowed to "have a great deal of reason."

‡ Saying of Mr. Fox. — In the discussion of the Ashburton treaty, by which the Madawaska settlement, a part of Canada allowed to belong to England, was ceded to the United States, I tried to revive the question, "Whether an act of parliament was not necessary to give it validity?" but I was told that the sufficiency of the prerogative to effect the transfer had been established by the unanswerable arguments of Thurlow.

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Mar. 1783. Coalition ministry.

The ill-advised coalition had now actually taken place between Mr. Fox and Lord North, which produced a censure on the peace in the House of Commons and the resignation of Lord Shelburne.

Examination of the question whether Mr. Fox wished Thurlow to continue Chancellor.

Till very recently, it had been uniformily stated, and universally believed, that in the formation of a new government the King still desired to have Thurlow Chancellor, and that his Lordship was nothing loth to comply with the royal wish, but that Mr. Fox and the Whigs recollecting the part he had acted under Lord Rockingham, objected in the most peremptory manner to such an arrangement; that this dispute caused the delay which gave rise to the motions in the House of Commons during the "interregnum;" and that his Majesty was at last induced to yield to a compromise, by which the Great Seal was put into commission.* But in a late valuable biographical work it is stated, that "the following particulars were related by Lord Eldon to his brother-in-law, Mr. John Surtees: Mr. Fox, much to Lord Thurlow's surprise, called at his house and was shown into his drawing room. Lord Thurlow, immediately that Mr. Fox's visit was announced, determined to receive him (observing when he narrated the matter, that he did not wish Mr. Fox should suppose him afraid to meet any one,) and an interview took place. Lord Thurlow, on being informed by Mr. Fox that he and his party wished the co-operation of his Lordship as Chancellor in the administration they wished to form, said, *Mr. Fox, no man can deny that either you or Mr. Pitt are beyond any two men that can be named fit from character and talents to be at the head of any administration; but as Mr. Pitt is very acceptable to the King, and is in an extraordinary degree popular in the country, I have connected myself with him.* On Lord Thurlow's refusal, the Great Seal was put in commission."† I do not impute the slightest intention wilfully to misrepresent either to Mr. John Surtees or to Lord Eldon, but the story is wholly incredible, and there must have been a lapse of memory in one of them, or Thurlow it must have intended to mystify. The refusal is more impos-

Lord Eldon's story on this subject shown to be inaccurate.

* Sir F. Wraxall's Mem. ii. 315.
† Twiss's Life of Eldon, i. 141.

sible than the offer, and the difficulty cannot be solved by an anticipation of a speedy change, for Thurlow would have considered that he might have an opportunity of accelerating this by entering the cabinet; that acceptance must be agreeable to the King; and that betraying one prime minister was the best prelude to service under another. But to end the controversy, we have only to look to Mr. Fox's declarations in the House of Commons at this very time respecting him whom it was supposed he was pressing to become his colleague. Mr. Coke, of Norfolk, having moved an address, praying "that his Majesty would graciously take into his consideration the distressed state of the empire, and, in compliance with the wishes of the House, would form an administration entitled to the confidence of the people," Mr. Fox observed, "If any wish to see who it is that for the last five weeks has governed the kingdom and ill advised his Majesty, let them go to the other House; they will there find the great adviser in his true character. Let them mark the man; they will see difficulty, delay, sullenness, and all the distinguishing features of what has been falsely called *an interregnum*, but in reality been a specimen of the most open and undisguised rule ever known in this country." Governor Johnstone took up the defence of the Chancellor, whom he described as "a great pillar of State, to whom the country might look up with confidence as a protector of its constitution against those mad projects of reform which threatened its annihilation; therefore dark insinuations against such a character ought not to be listened to: If the noble and learned Lord acted in the manner insinuated, and had been the cause of keeping the country so long without an administration, either by giving ill advice to his Majesty, or by any other means, he was a great criminal; but before withdrawing his friendship from one whom he had so long esteemed, he expected to have the fact proved, and he would not consent to presume its truth on mere surmise or assertion. If the right honourable gentleman, actuated by a sense of duty, was for a coalition, let him coalesce with the noble and learned Lord whom he once praised but now calumniated." *Mr. Fox.* — "I have still as high personal respect for the

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noble and learned Lord alluded to as ever; I have merely spoken of his public conduct, which I believe has been the source of great calamities to the country. I acknowledge his abilities, but I contend that they render their possessor an object to be dreaded, as he has in the same proportion the power of doing mischief."*

Mr. Fox's refusal to allow Thurlow to continue Chancellor.

It is quite certain that Thurlow's presence in Lord Rockingham's cabinet was a principal reason for Fox's resignation on the death of that nobleman; that he found it utterly impossible to act with him; and that he would now indignantly have scorned the notion of again being associated with him. His reluctant assent, at a subsequent period during the King's illness, to ratify the conditional disposition of the Great Seal in favour of Thurlow, only shows more strongly that he never would spontaneously have proposed such a course.

April 2. 1783. The Great Seal in commission.

The new ministry being formed under the nominal headship of the Duke of Portland, with Mr. Fox and Lord North as its efficient members, the Great Seal was taken from Thurlow and put into commission, Lord Loughborough being the first Lord Commissioner.†

* 23 Parl. Hist. 658—723.

† "7th May, 1783.—Alexander Lord Loughborough, Chief Justice of the Common Pleas, Sir Wm. Henry Ashurst, Knt., a Judge of the King's Bench, Sir Beaumont Hotham, a Baron of the Exchequer, being by letters patent, dated 9th April, 1783, appointed Commissioners of the Great Seal of Great Britain, upon the 7th day of May following, being the first day of Easter Term, came into the Court of Chancery at Westminster Hall, and in open Court took the oaths, &c.; the senior Master in Chancery holding the book, &c."—*Cr. Off. Min.* No. 2. 30.

# CHAPTER CLIX.

CONTINUATION OF THE LIFE OF LORD THURLOW TILL THE KING'S ILLNESS IN 1788.

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Thurlow and King George III. in opposition.

BUT Thurlow, deprived of the Great Seal, remained "Keeper of the King's conscience," and they both went into hot opposition. If it be ever excusable in a King of England to cabal against his ministers, George III. may well be defended for the course he now took; for they had been forced upon him by a factious intrigue, and public opinion was decidedly in his favour. Thurlow was frequently closeted with him, and they watched for a favourable opportunity to be revenged of the coalitionists. Mr. Pitt, on the resignation of Lord Shelburne, had declined an offer to form a new government, of which he was to be the head — wisely thinking it better to wait till the "coalition" should become more unpopular. For this reason he was for the present looked upon at Court rather coldly, and though polished and courteous in his manners, yet, on account of his lofty spirit and unbending independence, he never was personally so much beloved by George III. as Thurlow, who, rough and savage to the rest of mankind, was always noted for pliancy and assentation in the presence of royalty.

Their tactics.

From April to December, the term of the coalition ministry, Thurlow was constantly considering the most effectual means for effecting its overthrow. Had he been in the cabinet, he would have had a still better opportunity of thwarting its measures, and his opposition would have had double weight. However, his prudence and sagacity were of essential service in tempering the impatience of the King, and when the proper time arrived he struck the fatal blow with signal vigour and dexterity. It was by secret advice more than by open efforts in parliament that he struggled for his restoration to office, and till Mr. Fox's India Bill arrived

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in the House of Lords, that assembly was allowed to remain nearly in a passive state.

A.D. 1783. April 14.

The Ex-chancellor nevertheless availed himself unscrupulously of any little opportunity that occurred of disparaging the Government and embarrassing its proceedings.

Thurlow's attack on the bill to acknowledge the judicial independence of Ireland.

On the second reading of the bill framed and introduced by the late Government for abolishing the right of appeal from the Irish Courts of law to the British House of Lords, and acknowledging the supremacy of the Parliament of Ireland, Lord Thurlow, to make his opponents unpopular in one island or the other, or in both,—instead of allowing it quietly to pass, according to the wish of prudent men, said,—"I desire to have a distinct statement of the grounds on which the measure is adopted by the present ministers. For what purpose is it to be carried? To what end is it to be applied? With what other measures is it to be followed up? There can be no embarrassment to ministers in answering such questions. The noble Duke [Portland] tells us he looks round for confidence, and claims it from the tenour of his past life. I am in great doubt, my Lords, respecting the meaning of this word '*confidence*.' Does it mean that his Grace has no other plan in view? that his Cabinet have no plan for the government of Ireland? and that they have taken this bill up without inquiry, without consideration, without caring whether it goes far enough or too far? Or does it mean that they have a fine system to develop, but that we must trust to their good character till the day arrives for making it known? Let me have the English of the word '*confidence*.' Unless it means '*no plan*,' no claim can be laid to it by this untried administration." *Lord Loughborough.*—"My Lords, I consider this conversation (for we have had no debate on the merits of the bill) extremely irregular, if not disorderly. No objection being made to the bill, ministers are called upon to divulge their future system of policy, and to declare what may be their opinions and conduct on various matters not before the House. This is an opposition hardly consistent with fairness, and hardly such as any ministers could expect to encounter. The present ministers have been so short a time in place, that to require them

already to proclaim all their plans, does seem very strange; but above all is it strange, that they should be asked the grounds and objects of this bill. The persons who can best give that information are the ministers with whom it originated." *Lord Thurlow.*—"I deny, my Lords, that I am disorderly in taking the present opportunity of desiring to know the principles on which the present bill is to be passed into a law. If it is adopted without principle, if it is taken up merely on the authority of the predecessors of the present ministers, then it may well be said to resemble a school-boy's task, and the former ministers are to be considered as the '*prepositors*' of the noble Lords opposite,—who are mere school-boys, and ought not to hold the reins of government half an hour. But I have too much respect for their understanding, and too much regard for their reputation, to entertain such an opinion. They must have taken up this bill as part of a plan for the government of Ireland. If they will not give us the least intimation of it, let them at least tell us whether they have any plan at all." *

June 30. 1783. Thurlow in opposition becomes a reformer.

During this short interval of opposition, Thurlow, to the surprise and amusement of the public, professed himself a REFORMER; and that he might cast odium upon the Government for throwing out an absurd bill, which professed to correct abuses in public offices, he warmly supported it. Said he, "I feel for the fair fame of the present administration, and as a well-wisher to the men of honour and honesty who belong to it, I advise them not to rest satisfied with the pledge of the noble Duke [Portland,] that he will do what he can for economy. They are right not to mind the loss of mere popularity. He who rests on the empty clamour of a newspaper is an object only of contempt. But I advise the noble Duke to avoid the condemnation of wise, temperate, and thinking men, who never judge rashly or hastily. All such men must cry out against the resolution to stifle such a bill as this without due investigation. The reform is loudly called for, and we must have it immediately. The nation will not be content with the noble Duke's promise that he will begin the reform as soon as possible. The

* 23 Parl. Hist. 730—757.

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Legislature must interpose. It is not in the power of the best ministers to check abuses in their offices by their own authority. We may have ministers bankrupt in fortune and in name, and therefore the present bill is indispensable." He actually divided the House upon it — but it was rejected by a majority of 40 to 24.*

Fox's India Bill brought up from the Commons, Dec. 9. 1783.

He soon had a better battle-horse. On the 9th of December appeared at the bar of the House of Lords, attended by an immense number of coalition members of the House of Commons, Mr. Secretary Fox, and delivering a parchment roll to Lord Mansfield, as Speaker, said, "The Commons have passed a bill *for the better government of the territorial possessions and dependencies of this kingdom in the East Indies*, to which they pray the concurrence of your Lordships." The bill, as a matter of course, being read a first time, — on the motion "that it be read a second time on Monday next," Thurlow launched forth against it to a willing audience, — Lord Temple having very intelligibly conveyed the information to their Lordships that the bill was highly disagreeable to his Majesty, and that the rejection of it would enable his Majesty to get rid of ministers whom his Majesty so much disliked. *Lord Thurlow.* — "There is much indecency in proposing so early a day for the consideration of such an important measure — a measure perhaps the most important which was ever agitated in parliament. In the first place, it is a most atrocious violation of private property. If it be necessary, the necessity must be fully and fairly proved by evidence brought to your bar; not by the report of a Committee of the other House, to which I would give as much faith as to the adventures of Robinson Crusoe. Whatever necessity for interference may be proved, still I contend that the present bill neither goes to the correction of any existing abuse, to the prevention of any evil in future, nor to the relief of the Company's pressing wants. In fact, my Lords, it is a most direct and daring attack upon the constitution of this country, and a subversion of the first principles of government."

It is attacked by Thurlow on the first reading.

Lord Loughborough tried to defend the bill by reason of

* 23 Parl. Hist. 1106—1114.

It is defended by Lord Loughborough.

the insolvent state of the Company's affairs at home, and the deplorable state of their settlements abroad: "What scenes of desolation and distress do we behold? A prince has been driven from his palace,—his treasures have been seized, and he is now a fugitive wandering among the jungles of the Ganges. Fertile provinces have been laid waste—wars have been entered into without provocation and without advantage—and a peace with the Mahrattas will only lead to a fresh war with Tippoo Saib. A country so misgoverned must be wrested from the hands of its present weak or wicked rulers."

Thurlow's reply.

*Lord Thurlow.*—"The noble and learned Lord has not yet vouchsafed to give any solution to my difficulties. I ask the noble and learned Lord whether he can reconcile the principles of this bill to the principles of the British constitution, even supposing the necessity for the interference of parliament to be apparent? The noble and learned Lord presiding in two of our supreme Courts, I might have expected to find him the champion of British justice.* It is not fitting that such a character should meddle in the dirty pool of politics. The present bill means evidently to create a power which is unknown to the constitution—an *imperium in imperio,*—but as I abhor tyranny in all its shapes, I shall strenuously oppose this most monstrous attempt to set up a power in the kingdom which may be used in opposition to the Crown, and to destroy the liberties of the people. I wish to see the Crown great and respectable; but if the present bill should pass, it will be no longer worthy of a man of honour to wear. The King, by giving the royal assent to it, will, in fact, take the Crown from his own head, and place it on the head of Mr. Fox."†

From the manner in which these observations were received by the House, it was clear that the victory was won. The only consideration was as to the manner in which the bill should be rejected. Without any division, an order was made for hearing counsel and evidence at the bar in support of the Petition of the East India Company against the bill, and Thurlow, notwithstanding the vigorous efforts of Lord

* Lord Loughborough was at this time Chief Justice of the Common Pleas and First Commissioner of the Great Seal.

† 24 Parl. Hist. 122.

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Loughborough, being supported by Lord Mansfield and Lord Camden, was able to dictate the mode in which the examinations should be conducted,—so that the final catastrophe was evidently at hand. In the debate on the second reading, Thurlow would not vouchsafe even to deal out any more vituperation or denunciation. He contented himself with calling out, "Question! question! Divide! divide!" The bill was rejected by a majority of 95 to 76.*

Rejection of Fox's India Bill.

Dismissal of the coalition ministry. Dec. 10. 1783.

Next night, at twelve o'clock, a messenger delivered to the two Secretaries of State, Mr. Fox and Lord North, his Majesty's orders "that they should surrender up the seals of their offices by their under-secretaries, as a personal interview on the occasion would be disagreeable to him." The seals were immediately given to Earl Temple, who, as Secretary of State, sent letters of dismission the day following to the rest of the Cabinet Council. At the same time Mr. William Pitt, at the age of twenty-four, was declared Prime Minister, and the government was formed, which many predicted could not last more than a few weeks, but which proved the strongest and the most durable of any during the long reign of George III.

Mr. Pitt Prime Minister.

Thurlow again Chancellor.

Thurlow was, of course, to be restored to his office of Lord Chancellor, and he promised very cordially to support the new chief, though laughing at him in private on account of his zeal for reform, and his professions of public virtue. We shall see that, from their very different characters and principles, their mutual jealousies and dislikes were ere long manifested to all the world.

Justification of George III. and Thurlow for their conduct in opposing the coalition ministry.

Thurlow's conduct during the Coalition Ministry, though generally blamed with much severity, appears to me the most unexceptionable part of his whole career. He is censured for giving secret advice to the Sovereign when he was not in office; but we must not carry our constitutional notions to a pedantic length. I think George III. was fully justified in wishing to get rid of Mr. Fox and Lord North as soon as possible; and I cannot condemn an experienced statesman, who was in opposition, for giving him hints as to the most

* 24 Parl. Hist. 226.

expedient course to be pursued for gaining that object. Even if he repeated Lord Temple's declaration, that "his Majesty disliked the India Bill," I do not see that he was guilty of any very heinous offence. The name of the Sovereign cannot be regularly mentioned in Parliament to influence debate, but it is absurd to suppose that he can never have any wish except that of his ministers for the time being, and that he alone, of all persons in his dominions, is to be without any private opinion. Although his private opinion on a public measure is not binding, either in or out of Parliament, there are rare occasions where it may not improperly be made known, and George III. may deserve some credit for then acting as the Coryphæus of his subjects. No one in the present age believes that the framers of this famous India Bill had the intention imputed to them of erecting a power independent of the Crown, but its policy was doubtful. The joint sway of the Court of Directors and the Board of Control being substituted for the arbitrary rule of the "Seven Kings," our Eastern empire has been governed with wisdom, with success, and with glory.

The Lords Commissioners having some business to wind up in the Court of Chancery, the transfer of the Great Seal did not take place till the 23d of December. On that day they surrendered it at a council held at the Queen's House, and it was restored to Thurlow with the title of Lord Chancellor.*

Scene when Wedderburn, First Commissioner of the Great Seal, delivered it up to Thurlow as Chancellor.

It must have been amusing, during the ceremony, to observe the countenances of the two principal performers, who having been friendly associates had become bitter rivals — who had been years violently struggling, and who for years continued violently to struggle, for the same bauble. But how little could they penetrate into futurity! The wary Wedderburn thus obliged to part with the object of his affections, afterwards met with a cruel disappointment, when,

* "23d Dec. 1783. The Lords Commissioners for the custody of the Great Seal of Great Britain having delivered the said Great Seal to the King at the Queen's House on Wednesday, the 23d of Dec. 1783, his Majesty the same day delivered it to Edward Lord Thurlow, with the title of Lord High Chancellor of Great Britain, &c." The entry goes on in the usual form to state his sitting in Lincoln's Inn Hall next day, and his taking the oaths in Westminster Hall the first day of the following Hilary Term, the Master of the Rolls holding the book, &c. — *Cr. Off. Min.* No. 2. p. 32.

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on the King's illness, he thought it was within his clutch, and the reckless Thurlow at that time willing to sacrifice his benefactor and his party that he might retain it, — subsequently securely in possession of it, — in consequence of his own waywardness and intemperance saw it transferred to his opponent, — who now despondingly believed that his chance of reaching the summit of his ambition was gone for ever.

Majority in the Lords for Mr. Pitt. Tranquillity there.

During the storms which raged in the House of Commons for the remainder of the session, there was a perfect calm in the House of Lords. Here the new ministry had from the beginning a complete ascendency, while in the House of Commons there were great, though decreasing majorities against them, led on by Mr. Fox and Lord North.

Feb. 4. 1784. Debate in the Lords on the resolutions of the Commons against the new ministry.

It was only thought necessary once to bring the Peers into action. The Commons having passed certain resolutions which it was contended amounted to a repeal of an Act of Parliament, and to a denial of the King's right to choose his own ministers, Lord Effingham brought forward counter resolutions in the House of Lords, denying the right of one branch of the legislature to suspend the execution of the laws, and affirming the King's prerogative in the appointment of his ministers. These were opposed by Lord Loughborough, who insisted that the resolutions of the Commons were constitutional, as that House had a control over the supplies, and a right to advise the Crown upon the exercise of the prerogative. He said, "there is a maxim that 'the King can do no wrong;' but the law admits the possibility of the King being deceived, and there is no doubt that princes are more likely to be imposed upon than other men. According to this principle the Commons, even before the Revolution, were in the habit, as often as they deemed it expedient, to address the King, humbly praying him to change his councils and his councillors. I doubt not the abilities of many of the present administration — for some of whom I have the greatest esteem. Yet I think it very ill advised that they should remain in office after the majorities which have appeared against them, and in not seeing the perilous consequences of a breach between the two Houses of Parliament which they are now precipitating. An attempt is made to establish an executive power independent of parliament, and to create a

precedent which may be fatal to the dignity and to the authority of both Houses." — The Lord Chancellor leaving the woolsack, reprobated the resolutions lately come to by the Commons as "the wild efforts of childish ambition:" "Is their discretion," continued he, "to be substituted for law? I know how irksome it is to be obliged, from conscience and a love of justice, to oppose the desires of such a powerful body; this is not reposing on a bed of roses; but if I had been placed in the situation of the present Lords of the Treasury when served with the illegal mandate, I trust I should have had firmness to spurn at it with contempt and disdain." He warmly eulogised Mr. Pitt, and particularly dwelt on his disinterestedness in recently refusing the lucrative sinecure of the Clerk of the Pells, which, said he, "I was shabby enough to advise him to accept, and certainly should, under his circumstances, have been shabby enough myself to have accepted." He recommended the resolutions now moved as "a corrective of the wildness of that mad ambition, which by talking in a nonsensical tone of the dignity and honour of parliament, persuaded men, of whom better things might be expected, to adopt measures extravagant, absurd, and mischievous." *

March 24. 1784. The Great Seal stolen.

The tide of popular favour running stronger and stronger against the coalitionists, although Mr. Pitt continued in a minority in the House of Commons, and an address had been carried there praying for a change of ministers,—it was determined to dissolve parliament, and to appeal to the people. While preparations were making to carry this measure into effect, the metropolis was thrown into consternation by the news that the Great Seal was stolen from the custody of the Lord Chancellor, and many who attached a superstitious reverence to this bauble, imagined that for want of it all the functions of the executive government must be suspended.

The Whigs suspected of the theft

A charge was brought against the Whigs that, to prevent the threatened dissolution, they had burglariously broken into the Lord Chancellor's house in the night time, and feloniously stolen and carried off the CLAVIS REGNI.

* 24 Parl. Hist. 513.

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A.D. 1784. Real history of this affair.

The truth was, that very early in the morning of the 24th of March, some thieves did break into Lord Thurlow's house in Great Ormond Street, which then bordered on the country. Coming from the fields, they had jumped over his garden wall, and forcing two bars from the kitchen window, went up a stair to a room adjoining the study. Here they found the Great Seal inclosed in the two bags so often de scribed in the close roll, one of leather — the other of silk, — two silver-hilted swords belonging to the Chancellor's officers, — and a small sum of money. With the whole of this booty they absconded. They effected their escape without having been heard by any of the family; and though a reward was offered for their discovery, they never could be traced. It will hardly be believed that Lord Loughborough, under whose legal advice the Whig party at this period acted, was so bad a lawyer as to recommend this burglary as a manœuvre to embarrass the Government, although King James II. had thought that he had effectually defeated the enterprize of the Prince of Orange by throwing the Great Seal into the river Thames.

When the Chancellor awoke and found what had happened, he immediately went to Mr. Pitt in Downing Street, and the two waited upon his Majesty at Buckingham House to communicate the intelligence to him. A council was immediately called, at which the following order was made: —

Order in Council for making a new Great Seal.

"At the Court at St. James's, the 24th of March, 1784, present, the King's most Excellent Majesty in Council, — Whereas in the course of the last night the House of the Right Honourable the Lord High Chancellor of Great Britain was broke open, and the Great Seal of Great Britain stolen from thence; it is this day ordered by his Majesty in Council, that his chief engraver of seals do immediately prepare a Great Seal of Great Britain with the following alterations: —

"That on the side where his Majesty is represented on horseback, the number of the present year be inserted in figures 1784 on the plain surface of the seal behind his Majesty; and the herbage under the horses' hind legs omitted.

"That on the reverse, where his Majesty is sitting in state, the palm branch and the cornucopia be omitted on the sides of the arms at the top; and over the above arms the number of the present year 1784 in figures to be inserted, and at the bottom also the present year MDCCLXXXIIII. in Roman figures.

"And that he do present the same to his Majesty at this board to-morrow for his royal approbation. And the Right Honourable Lord Sidney, one of his Majesty's principal Secretaries of State, is to cause a warrant to be prepared for his royal signature to the said engraver upon this occasion."

Such expedition was used, that by noon the following day the new Great Seal was finished, and the following order was made:—

Order in Council for the use of the new Great Seal.

"At the Court at the Queen's House, the 25th of March, 1784, present, the King's most Excellent Majesty in Council, — A new Great Seal of Great Britain having been prepared by his Majesty's chief engraver of seals in pursuance of a warrant to him for that purpose under his royal signature, and the same having been this day presented to his Majesty in Council and approved, his Majesty was thereupon graciously pleased to deliver the said new Seal to the Right Honourable Edward Lord Thurlow, Lord High Chancellor of Great Britain, and to direct that the same shall be made use of for sealing all things whatsoever which pass the Great Seal." *

* For some reason, of which there is no account or tradition in the Council Office, the Great Seal was again changed, as appears from the following entries, extracted from the books of the Privy Council:

"At the Court at St. James's the 2d of April, 1784, present, the King's most Excellent Majesty in Council,—It is this day ordered by his Majesty in Council that his Majesty's chief engraver of seals do forthwith prepare the draft of a new Great Seal of Great Britain, and present the same to his Majesty at this board for his royal approbation."

Great Seal again changed.

"At the Court at St. James's the 14th of May, 1784, present, the King's most excellent Majesty in Council, — His Majesty in Council having been this day pleased to approve the draught of a new Great Seal of Great Britain, doth hereby order that his chief engraver of seals do forthwith engrave the said Seal according to the said draught, and lay the same before his Majesty at this board for his royal approbation; and that the Rt. Hon. Lord Sidney, one of his Majesty's principal Secretaries of State, do cause a warrant to be prepared for his Majesty's royal signature to the said engraver upon this occasion."

"At the Court at St. James's the 15th of April, 1785, present, the King's most Excellent Majesty in Council, — This day the old Great Seal being delivered up to his Majesty by the Right Hon. Edward Lord Thurlow, Lord High Chancellor of Great Britain, the same was defaced in his Majesty's presence; and his Majesty was thereupon pleased to deliver to his Lordship a new Great Seal."

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From the Council at St. James's His Majesty immediately proceeded to the House of Lords, and the Commons being summoned (the Lord Chancellor standing on his right hand, holding the new Great Seal in the old purse), thus pronounced the doom of the Coalitionists:—

Prorogation and dissolution of parliament.

"My Lords and Gentlemen, on a full consideration of the present situation of affairs and of the extraordinary circumstances which have produced it, I am induced to put an end to this session of parliament; and I feel it a duty which I owe to the constitution and to the country in such a situation, to recur as speedily as possible to the sense of my people by calling a new parliament."

In allusion to this theft of the Great Seal, the Rolliad, after describing the different classes of nobility in the House of Lords,—in the following lines "proceeds to take notice of the admirable person who so worthily presided in that august assembly:"—

Lines in the Rolliad on Thurlow with reference to the stealing of the Great Seal.

"The rugged Thurlow, who, with sullen scowl,
In surly mood, at friend and foe will growl;
Of proud prerogative the stern support,
Defends the entrance of great George's Court
'Gainst factious Whigs, *lest they who stole the Seal*
The sacred diadem itself should steal:
So have I seen near village butcher's stall
(If things so great may be compar'd with small)
A mastiff guarding on a market-day
With snarling vigilance his master's tray." *

March 25. 1784. Triumph of Mr. Pitt on the appeal to the people.

When the appeal to the people was made, the Coalitionists were swept away like chaff before the wind, and a House of Commons was returned, ready to do whatever Mr. Pitt should desire them, except to reform the abuses in the representation of the people,—a measure which he still urged earnestly and I believe sincerely.

May 18. 1784.

From the meeting of the new parliament till the question of the Regency arose, Thurlow enjoyed perfect ease, tranquillity, and security. No administration in England ever was in such a triumphant position as that of Mr. Pitt, when

* Many other *jeux d'esprit* were made upon the occasion, some of which I have heard from men who are now grave Judges and dignitaries in the church, but may not set down. The most popular was a supposed dialogue between the Chancellor and a lady of his family.

after the opposition it had encountered, the nation applauding the choice of the Crown, declared in its favour, and the Coalition leaders, with their immense talents, family interest, and former popularity, found difficulty to obtain seats in the House of Commons.

Calm in the House of Lords.

While Mr. Fox, Mr. Burke, and Mr. Sheridan kept up some smart debates in the House of Commons upon the Westminster scrutiny and other subjects, the House of Lords usually only met to adjourn.* However there was a little show of resistance there to Mr. Pitt's India bill, Lord Stormont objecting to its proceeding in the absence of the law Lords; but the Lord Chancellor caused much merriment by showing "that of the six there was only one absent from being entangled in the discharge of professional duty;" and the general opinion was, that the opportunity should not be lost of getting quietly on with the second reading. There was only one division on the bill—when (to prove the little interest which the subject now excited) the numbers were 11 to 4.† The Chancellor likewise condescended to defend against a sharp attack of Lord Loughborough Mr. Pitt's famous bill for commuting the tax on tea ‡, for one on windows,—ably demonstrating the advantages of low duties and free trade.§ However, before the conclusion of this session, he showed symptoms of that waywardness of temper or rather dislike of Mr. Pitt, which broke out from time to time, and at last caused his removal from office.

Feeble opposition to Mr. Pitt's India Bill.

Aug. 16. 1784. Thurlow opposes a Government bill respecting the forfeited estates in Scotland.

Mr. Dundas, as the organ of the Government, had brought in a bill, which Mr. Pitt supported in an able speech, and which passed the Commons without the slightest opposition, for restoring the estates in Scotland, which had been forfeited in the rebellion of 1745, to the heirs of the former owners who had been attainted. But when it stood in the orders of the day for a second reading in the House of Lords, the

* Now was uttered the sarcasm on their Lordships, which may still be repeated. — Scene below the Bar. *1st Mob.* "How *sleepy* the Lords are!" — *2d Mob.* "No wonder; *they rise so early.*"

† 24 Parl. Hist. 1290—1310.

‡ "While Billy, list'ning to their tuneful plea,
In silence sipp'd his *Commutation* Tea."—*Rolliad.*

§ 24 Parl. Hist. 1374.

Lord Chancellor left the woolsack, and, instead of opening it, as was expected, and moving that it be read a second time, to the great amazement of all his hearers, spoke as follows: "My Lords, I desire to know what there is to render it necessary that a bill of such magnitude should pass so suddenly at the very close of the session? I speak of this bill as a private man, for I know nothing of it as a minister. I do lament that I never heard of it till it had been read a first time in the other House. Since then, considering my various avocations, noble Lords will easily believe that I have not had time to consider it with sufficient attention. I must confess, my Lords, I think it would have been more regular if the bill had originated in this House, or with the King himself. In that case I might have been favoured with some prior intimation of the grounds on which, it seems, his Majesty has been advised to relax the severity of the laws against treason, framed for the public tranquillity. Bills of remission and lenity have almost invariably been introduced by a message from the Crown to this House. I will not attempt to argue at length against the bill, for all arguments would be vain if the Government be resolved to carry it." He contended, however, that "by a settled maxim of the British constitution, nothing was an adequate punishment for treason, a crime leading to the subversion of government, but the total eradication of the traitor, his name, and family, from the society he had injured. *Fecit hæc sapientia quondam.* This was the wisdom of former times. This was the rule of conduct laid down and invariably acted upon. But if a more enlightened age thinks otherwise, I hope equal liberality is to be shown to the heirs of those attainted in former rebellions." He likewise objected strongly to a clause in the bill, for applying part of the accumulated fund arising from the rents of these estates to the completion of the Forth and Clyde Canal, which he denounced as a job, and thus concluded: "I am far from imputing any improper motive to those from whom the measure comes. I know them well, and know their honour to be equal to their great abilities; but it is incumbent on me, sitting on the woolsack, to look with an unbiassed mind to every measure that comes before the House, from whatever quarter, and scrupu-

lously to form my judgment upon it according to the principles of justice and equity. Possibly I may stand single in my sentiments respecting this bill; but I think it my duty to deliver them." He did not venture to divide; or very likely the Lord Chancellor would have been in the novel situation of having no one to appoint teller on his own side. The bill passed without further opposition.* The probability is, that the supposed affront arose from the measure being thought so unobjectionable, that the Chancellor, to save the trouble, was not consulted about it,—or it might have been discussed at a cabinet when he was asleep. His belief that the King was so devotedly attached to him, made him careless about pleasing or displeasing the minister, and encouraged him to take liberties with the House, and with all public men.†

Thurlow supports the resolutions for free trade with Ireland.

In the session of 1785, notwithstanding his former opposition to the same policy, Thurlow now strenuously supported the propositions for a commercial union with Ireland, which do so much honour to the memory of Mr. Pitt, and not only show that he was disposed to govern that country with justice and liberality, but that, being the first disciple of Adam Smith who had been in power, he thoroughly understood, and was resolved to carry into effect, the principles of free trade. The Chancellor treated with infinite contempt the witnesses who appeared at the bar to prove the ruin which would overtake the manufactures of England if the manufactures of Ireland, where labour was so cheap, might come into competition with them. He spared Peel, the head of the cotton-spinners, but he said, that "while the great Wedgwood was a distinguished *potter*, he was a very bad *politician*."‡

* 24 Parl. Hist. 1363—1373.

† We may know what his opponents at this time thought might be plausibly imputed to him from the *jeu d'esprit* in the "Rolliad," entitled "The POLITICAL RECEIPT BOOK for the year 1784."

"*How to make a Chancellor.*"

Recipe for making a Chancellor.

"Take a man of great abilities, with a heart as black as his countenance. Let him possess a rough inflexibility, without the least tincture of generosity or affection, and be as manly as oaths and ill manners can make him. He should be a man who will act politically with all parties,—hating and deriding every one of the individuals who compose them."—*Rolliad*, 22d ed. p. 430.

‡ 25 Parl. Hist. 820—885.

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Jan. 24. 1786.

When Parliament met, in the beginning of 1786, notwithstanding the general tranquillity and the returning prosperity of the nation, an attack was made, by Lord Loughborough, upon Ministers, respecting their Irish and their Indian policy, but Lord Thurlow defended both very vigorously, and the address was carried without a division.* The opposition Lords do not seem to have offered any resistance to the measures of Government during the remainder of the session. The impeachment of Mr. Hastings was the only subject which now interested the public mind, and this calling forth unexampled displays of eloquence from Burke and Sheridan, had not yet reached the Upper House.

March 6. 1787. M. de Vergenne's treaty defended by Thurlow.

The session of 1787, though still without any ministerial crisis, was not quite so sluggish. The French commercial treaty concluded with M. de Vergennes, founded on the best principles of international policy, and calculated to draw together, by mutual benefits, two nations between whom, from prohibitory duties and rankling jealousies, there had for centuries only been a succession of wars and truces, being factiously attacked by Lord Loughborough and other opposition Peers, was violently defended by the Lord Chancellor. He, as usual, abstained from any expenditure of argument, of which, whether in judging or debating, he was ever penurious; but he asserted, and adjudged, that the treaty was an excellent treaty, and he pronounced all the objections to it to be frivolous and vexatious. He gained a considerable, but undeserved, triumph over Lord Shelburne (now become Marquis of Lansdowne), who had the temerity to interrupt him. Commenting on certain observations respecting the "Family Compact" between France and Spain, and the erection of new fortifications at Cherbourg, Thurlow said, "I maintain, my Lords, that the Family Compact is a treaty which no nation on earth has a right to tell France or Spain they may not make. If Spaniards in France are to be treated as Frenchmen, and Frenchmen in Spain are to be treated as Spaniards, and there is an alliance offensive and

His quarrel with Lord Shelburne.

* 25 Parl. Hist. 995. This debate is memorable for being the first in which a legislative Union with Ireland was ever publicly proposed.

defensive between them, why should we murmur? We are told that a remonstrance should be made against the fortifications now carrying on at Cherbourg. Where is the Minister who would venture to make such a remonstrance? [*Marquis of Lansdowne.* 'I would.'] By what part of the law of nations have we a right to remonstrate? [*Marquis of Lansdowne.* 'We have no right.'] Then the noble Marquis would do what he confesses he has no right to do; so that he and his application would be laughed at, as absurd and ridiculous." *

Thurlow overruled on a question respecting the Scotch peerage.

The House however, soon after, for once rebelled against their tyrant. The Duke of Queensberry and the Earl of Abercorn, while two of the sixteen representative Peers of Scotland, being created British Peers, Lord Stormont moved a resolution, which he founded on a just construction of the Articles of Union, that they ceased to sit as representatives of the Scotch Peerage, and Dr. Watson, Bishop of Landaff, ably supported the motion. — *Lord Chancellor.* "Your Lordships are not to listen to supposed or real convenience, — to this or that set of men, — nor to consider what an act of parliament ought to be, but what it is. Here you have the Treaty of Union which contains no such disqualification; and I say you are bound to abide by the letter of it. I must take the liberty of reprehending the noble Viscount for using the arguments with which he introduced his motion, and the Right Reverend Prelate would have done well to have read the Articles of the Union before he ventured to let loose his opinions on the subject. I insist upon it, my Lords, that giving an English title to a Scotch Peer cannot take away or diminish any one function previously belonging to him, and that he is as fully capacitated to be a representative Peer of Scotland as before." Nevertheless, Lord Loughborough, taking the opposite side, and making out a strong case, as well by the words of the statute as by precedent, the motion, to the great mortification of the Chancellor, and the

* 26 Parl. Hist. 586. We could not have remonstrated on this occasion as we formerly did about the fortifications of Dunkirk, — which, by treaty, were to be demolished; but all warlike preparations may be made the subject of representation and remonstrance, — although the law of nations does not forbid a state to arm all its citizens, and to make all its territory one garrison.

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general surprise of the by-standers, was carried by a majority of 52 to 38.*

Thurlow throws out Bill for Relief of Insolvent Debtors.

The Chancellor soon recovered his ascendency, and, acting on his usual illiberal principles, threw out "a Bill for the Relief of Insolvent Debtors," which, till he spoke, was in great favour with the House. It had been read a second time without opposition; but on the motion for going into a committee upon it, Lord Thurlow, denying that he was so malignant an enemy to the happiness of mankind as to feel a satisfaction in the distress of any portion of his fellow creatures, pointed out what he called the manifest injustice of breaking in upon that power of "coercion of payment" with which the law had armed the creditor for the security of his property. "If there is to be," said he, "such a thing as imprisonment for debt, it ought to continue unchecked and unrestrained, unless in cases of flagrant oppression and unnecessary cruelty. The general idea, that humanity requires the intervention of the legislature between the debtor and the creditor, is a false notion — founded in error and dangerous in practice. A much greater evil than the loss of liberty is the dissipation and corruption that prevail in our prisons; to these your Lordships had better direct your attention, than to defrauding the creditor of the chance of recovering his property by letting loose his debtor, and taking from him the very hope of payment." So blinded was he by prejudice as not to see that the "dissipation and corruption" of which he complains were produced by the very power of imprisoning which he defended. It is important that such distorted sentiments should be recorded for the use of those who are to write the history of human errors. How delightful to think that, imprisonment for debt being abolished, the site of the Fleet prison, the scene of misery and vice, the description of which, in the pages of Fielding and Smollett, harrows up our souls, is now to be converted into a centre railway station for the metropolis, — so that those who are henceforth to congregate there, instead of being immured for life in darkness and filth, and forced to resort to ebriety as a temporary

His speech in support of imprisonment for debt.

Site of the Fleet prison a central railway station for the metropolis.

* 26 Parl. Hist. 596—608.

relief from despair, may in a few hours be conveyed, for the purposes of useful industry or of innocent recreation, through pure air and over verdant fields, to the remotest extremities of the kingdom! While the perfectability of our nature must be acknowledged to be a delusion contrary alike to religion and philosophy, the vast improvements which have been made in our social system should stimulate and encourage our efforts to diminish the sum of crime and of suffering, and to raise the standard of intellectual cultivation and of material comfort among mankind.

Impeachment of Warren Hastings.

The public attention now began to be entirely engrossed by the prosecution of Warren Hastings. The opinion of a subsequent generation has been, that this great man, who, in a time of national depression, and amidst appalling dangers, preserved and extended our Indian empire,—although he had committed faults, and even crimes,—upon the whole deserved well of his country, and ought to have been honoured and rewarded. The opposition, however, misled by exaggerated accounts of his misconduct, eager to recover the popularity which they had lost by the Coalition, and surrendering themselves into the hands of the vengeful Francis and the enthusiastic Burke, became his accusers, and were insensibly involved in the impeachment, — which, notwithstanding the unexampled *éclat* attending it, conferred upon them as a party no lasting credit or solid advantage. The suspicion is, that Pitt, a little alarmed by the high favour shown to Hastings at Court, and not displeased to see his own adversaries waste their strength in exposing the misgovernment of distant regions, instead of attacking his ministerial measures at home,—although he took a just view of the merits of the cause, — with professions of strict impartiality threw the weight of his influence into the scale of the prosecutors. But Thurlow — partly let us hope from a belief of the groundlessness of the charges (although he was not supposed to have had leisure or inclination to examine them)—partly to please the King and Queen, who took Mr. and Mrs. Hastings under their special protection*—partly from a desire to

History of it.

* In the libels of the day, this reception was ascribed less to the King's sense

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find a rival to Pitt, whom he ever regarded with secret enmity—warmly and openly embraced the opposite side—enlarging without qualification on the distinguished virtues and great services of the accused—and supporting him on every occasion "with indecorous violence."* Pitt having professed scruples when the King hinted a wish that Hastings, a few months after his return, should be called to the Upper House, Thurlow treated these scruples with contempt, and said, "there was nothing to prevent the holder of the Great Seal from taking the royal pleasure about a patent of peerage." So encouraged, Hastings actually chose his barony. Having fulfilled the resolution he had formed when an orphan boy at a village school—to recover the estate which had been for many centuries in his family,—he now took his title from it, and declared that he would be "Lord Daylesford of Daylesford, in the county of Worcester." But Pitt put an end to all these speculations, after voting for him on the charge respecting the Rohilla war,—one of the best established,—by voting against him on the charge respecting the treatment of Cheyte Sing,—one of the most unfounded,—although, when it was to be brought forward by Mr. Fox, a Treasury circular had been sent to all the ministerial members, asking them to attend, and vote against it. Great was the astonishment of the friends of Mr. Hastings, and of the whole House; but it is said that, a few hours before the debate began, Pitt received intelligence of the intrigue respecting the peerage, and of Thurlow's declaration that, under the King's authority, he would put the Great Seal to the patent without consulting any other minister. The turn was so sudden that even the Attorney General divided against the prime minister; but the impeachment was carried by a majority of 119 to 79. The other articles were voted without

of the services of the husband than to the presents made by his wife to the Queen.—Thus, in the famous Eclogue of "THE LYARS," we have Banks's stanza to show the power of gold:

"Say what that mineral, brought from distant climes,
Which screens delinquents and absolves their crimes,
Whose dazzling rays confound the space between
A tainted strumpet and a spotless Queen."

* Macaulay's Ess. iii. 429.

difficulty, and on the 14th day of May, 1787, Mr. Burke appeared at the bar of the House of Lords, attended by many members, and "in the name of the House of Commons, and of all the Commons of England, impeached Warren Hastings, Esq. of high crimes and misdemeanours." Thurlow was at no pains to conceal his disapprobation of the proceeding, and resolved to do every thing in his power to defeat it.

May 21. 1787. Hastings bailed by the House of Lords.

Mr. Hastings being arrested by the Serjeant-at-Arms of the House of Commons, and handed over to the custody of the Gentleman Usher of the Black Rod, as the officer of the House of Lords, the Duke of Norfolk having proposed that he should be held to bail for 50,000*l.*,—the Lord Chancellor not improperly procured the sum to be reduced to 20,000*l.*, with two sureties in 10,000*l.* each. *

A.D. 1788. His trial in Westminster Hall.

But the trial did not begin till the 13th of February in the following year. The charge not being capital, no Lord High Steward was appointed; and Lord Thurlow, during the time he held the Great Seal, presided over it as Chancellor, or Speaker of the House of Lords, although, at the conclusion of it, having been deprived of office, he was the lowest in dignity.

Description of the scene.

"There have been spectacles," says Mr. Macaulay, "more dazzling to the eye, more gorgeous with jewellery and cloth of gold, more attractive to grown-up children, than that which was now exhibited at Westminster; but, perhaps, there never was a spectacle so well calculated to strike a highly cultivated, a reflecting, an imaginative mind. Still the various kinds of interest which belong to the near and to the distant, to the present and to the past, were collected on one spot and in one hour. All the talents, and all the accomplishments which are developed by liberty and civilisation, were now displayed with every advantage that could be derived both from co-operation and from contrast. Every step in the proceedings carried the mind either backward through many troubled centuries to the days when the foundations of our constitution were laid; or far away over boundless seas and deserts to dusky nations, living under strange stars, worshipping strange gods, and

* 26 Parl. Hist. 1217.

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writing strange characters from right to left. The High Court of Parliament was to sit according to forms handed down from the days of the Plantagenets, on an Englishman accused of exercising tyranny over the lord of the holy city of Benares, and over the ladies of the princely House of Oude."—I could only wish, that in the gorgeous description of the ceremonial which follows—amidst the nobles, judges, orators, statesmen, beauties, artists, and men of letters, who are presented to us, we had been favoured with a view of the rugged Thurlow frowning on the woolsack, shaking his awful locks, terrible to behold.

Thurlow's address to Hastings on his arraignment.

After the proclamation was made in Westminster Hall by the crier, that Warren Hastings, Esq., late Governor of Bengal, was now at his trial for high crimes and misdemeanours, with which he was charged by the Commons of Great Britain, and that all persons who had aught to allege against him were now to stand forth, — a general silence followed, and the Chancellor thus addressed the accused: "Warren Hastings, you are brought into this Court to answer to the charges preferred against you by the Knights, Burgesses, and Commons of Great Britain — charges now standing only as allegations, by them to be legally proved, or by you to be disproved. Bring forth your answers and defence with that seriousness, respect, and truth, due to accusers so respectable. Time has been allowed you for preparation, proportioned to the intricacies in which the transactions are involved, and to the remote distances whence your documents may have been searched and required. You will still be allowed bail, for the better forwarding your defence, and whatever you can require will still be yours, of time, witnesses, and all things else you may hold necessary. This is not granted you as any indulgence: it is entirely your due: it is the privilege which every British subject has a right to claim, and which may be claimed by every one who is brought before this high tribunal." "This speech" (says Madame D'Arblay) "uttered in a calm, equal, solemn manner, and in a voice mellow and penetrating, with eyes keen and black, yet softened into some degree of tenderness, whilst fastened full upon the prisoner,—this speech, its occasion, its portent, and its object, had an effect

Miss Burney's account of it.

upon every hearer of producing the most respectful attention, and (out of the Committee box at least) the strongest emotions in the cause of Mr. Hastings."*

Question as to the mode in which the trial should be conducted.

As the trial proceeded, the first contest which arose was at the conclusion of Mr. Burke's great opening oration,— "whether each charge should be treated and concluded by speeches and evidence separately, or the Commons should be required to open all the charges, and give all their evidence in support of them, before the accused was called upon to begin his defence?" Mr. Fox strongly recommended the former mode of proceeding, for the sake of convenience and justice, and in pursuance of parliamentary precedent — particularly the trial of Lord Strafford.

*Lord Chancellor.* — "Mr. Burke, whose imagination is of unparalleled fertility, in stating the case against the defendant, has mentioned circumstances of such accumulated horror, and of such deep criminality, that every thing contained in the written articles of accusation before your Lordships sinks in the comparison to utter insignificance, and the Right Hon. manager has unequivocally declared that he has not assumed the privilege of an advocate to exaggerate. After this I shall hold him to the proof of all he has asserted. Acts of such atrocity, my Lords, were imputed to the defendant, that many very respectable persons who were present have not yet recovered, and probably never will recover, the shock they sustained at listening to the relation of them. But in proportion as I am ready to punish Mr. Hastings with severity when lawfully convicted, I must see that he has a full and fair opportunity of vindicating his innocence. This he can only have by hearing all that is to be said or proved against him under all the charges,

* It will be recollected that Miss Burney, then in the service of Queen Charlotte, partook of all the feelings of the Court in favour of Mr. Hastings. Describing the scene in Westminster Hall, she goes on to say — "Mr. Windham, then looking still at the spectacle, which indeed is the most splendid I ever saw, arrested his eyes upon the Chancellor. 'He looks very well from hence,' cried he; 'and how well he acquits himself on these solemn occasions! With what dignity, what loftiness, what high propriety he comports himself.' This praise to the Chancellor, who is a known friend to Mr. Hastings, though I believe he would be the last to favour him unjustly now he is on trial, was a pleasant sound to my ear."

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before he is called upon for his defence. With respect to the usage of parliament, of which we have been told so much, as contradistinguished from the common law, I utterly disclaim all knowledge of it. It has no existence. In times of barbarism, indeed, when to impeach a man was to ruin him by the strong hand of power, the usage of parliament was quoted in order to justify the most arbitrary proceedings. In these enlightened days I hope that no man will be tried but by the law of the land, which is admirably calculated to protect innocence and to punish guilt. The trial of Lord Strafford was, from beginning to end, marked by violence and injustice. A licentious and unprincipled fellow, Pym, attacked that noble Lord with all the virulence and malignity of faction. The real crime of that great statesman was, that he had quitted his party — as if it were not meritorious to serve the state instead of a faction — as if it were a crime to quit a gang of highwaymen. The Commons may impeach, but your Lordships try the cause, and the same rules of procedure and of evidence which obtain in the Courts below, I am sure will be rigidly followed by your Lordships." Lord Loughborough strongly supported the opposite side, but was beaten by a majority of 88 to 33, — which very distinctly intimated what, at a distant period, would be the final result of the prosecution.*

Thurlow's opinion of Pym and Lord Strafford.

Thurlow and the African slave trade. Change of public sentiment on this subject.

The only other matter of public interest in which Thurlow took part before the King's illness threw the country into confusion, was "African Slavery." A great change of sentiment had taken place since the times when the ASSIENTO treaty was negotiated, securing to us, with the joy and applause of all parties in the state, in addition to our own slave trade, the privilege of supplying with slaves the colonies of other nations. From the immortal efforts of Granville Sharpe, Clarkson, and Wilberforce, the traffic in human flesh now began to be viewed by many with abhorrence, and even some zealous defenders of whatever is established occasionally doubted whether the practice of acquiring by force or by fraud the possession of human beings, removing them

* 27 Parl. Hist. 55—65.

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for ever from their native shore, and after the indescribable horrors of their passage across the ocean, condemning the survivors and their progeny to interminable toil for the profit of strangers, under the stimulus of whipping and torture, — was quite consistent with the dictates of humanity, and with the religion of Jesus, who had taught us to consider and to treat all mankind as brethren, and "to do unto others as we would that they should do unto us." In the session of 1788, the subject was brought before the House of Commons, and Mr. Pitt, with the fervour and sincerity of youth, supported the views of those who were resolved to free the country from this disgraceful stain.

Bill to mitigate the horrors of the "Middle Passage."

As a preliminary measure, a bill was passed to mitigate the atrocities of the "Middle Passage," by enacting that slave-ships should not carry beyond a certain number of slaves in proportion to their tonnage, — evidence having been given at the bar, that in those ships no slave had a space to lie in more than five feet six inches in length, by sixteen inches in breadth; that not only the decks were covered with bodies thus stowed, but that between the decks and the ceiling there were often platforms or broad shelves similarly covered; that the slaves were chained two and two together by their hands and feet, and were fastened by ring bolts to the deck; that the "dancing" boasted of to prove their cheerfulness, consisted in compelling them to jump a certain time daily on the deck in irons for their health; that the mortality among them was appalling; and that sometimes, when not watched, large numbers of them, from despair, leaped overboard and were drowned.* When the bill came up to the House of Lords, the Chancellor opposed it in his peculiar manner, by saying, "that as it stood it was *nonsense*, and that he concluded some amendment would be proposed to correct the *nonsense* of one part of it with the *nonsense* of the other." He afterwards boldly spoke out, saying: "It appears that the French have offered premiums to encourage the African trade, and that they have succeeded. The natural presumption therefore is, that we ought to do the same. For my

Opposed by Thurlow.

* There are several cases in the Law Reports on the question, "whether the underwriters were liable for the death of slaves from suicide?"

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part, my Lords, I have no scruple to say that if the 'five days' fit of philanthropy' which has just sprung up, and which has slept for twenty years together, were allowed to sleep one summer longer, it would appear to me rather more wise than thus to take up a subject piece-meal, which it has been publicly declared ought not to be agitated at all till next session of Parliament. Perhaps, by such imprudence, the slaves themselves may be prompted, by their own authority, to proceed at once to 'a total and immediate abolition of the trade.' One witness has come to your Lordships' bar with a face of woe — his eyes full of tears, and his countenance fraught with horror, and said, 'My Lords, I am ruined if you pass this bill! I have risked 30,000*l.* on the trade this year! It is all I have been able to gain by my industry, and if I lose it I must go to the hospital!' I desire of you to think of such things, my Lords, in your humane phrensy, and to show some humanity to the whites as well as to the negroes." But Mr. Pitt would not allow the Government to be disgraced by the rejection of the bill. It passed the Lords, with some amendments for granting compensation, and these being objected to by the Commons on the score of privilege, another bill to the same effect passed both Houses, and received the royal assent.*

The bill is carried.

* 27 Parl. Hist. 638—649.

# CHAPTER CLX.

## CONTINUATION OF THE LIFE OF LORD THURLOW TILL HE WAS FINALLY DISMISSED FROM THE OFFICE OF CHANCELLOR.

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A.D. 1788. The King's illness.

In the midst of profound tranquillity at home and abroad, the nation was suddenly thrown into a state of the greatest consternation and alarm by the avowal of his Majesty's complete incapacity to exercise any of the functions of his high office. It is now known that he had laboured under a similar illness, for a few weeks, in the year 1765, which was the cause of the regency bill then passed; but the fact was successfully concealed from the public.* The symptoms now returned upon him, at first rather gradually, causing unexampled embarrassment to his Ministers. Near the close of the preceding session of Parliament his Majesty was occasionally in a very excited state, and when he returned from his visit to Cheltenham, there appeared still greater cause for apprehension. Parliament stood prorogued to the 25th of September.

When that day approached, the King had still intervals of clear understanding, and exhibited demonstrations of accurate perception and an undiminished power of reasoning. A council was held, which went off very quietly, — when an order was made for a further prorogation, and his Majesty signed a warrant for a commission to pass the Great Seal for that purpose, and Parliament was, with the usual solemnities, prorogued by the Lord Chancellor till the 20th of November, *then to meet for the despatch of business.*

Oct. 24. 1788.

At a levée held at St. James's before that day arrived, his Majesty's conversation and demeanour left no doubt in the mind of any who were present as to the nature of his malady. It was

* It had been stated by Smollett, in his history of the commencement of this reign; but only a few copies containing the statement were sold: they were eagerly bought up by the Government, and the faint whisper which they caused died away. — *Adolphus*, i. 177.

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immediately after necessary to put him under restraint; his life for some days was considered to be in imminent danger, — and when this paroxysm subsided he was still totally and constantly deprived of the use of reason. The royal sufferer was removed first to Windsor, and afterwards to Kew,—where he was put under the care of Dr. Willis, and other physicians supposed to be best acquainted with the treatment of alienation of mind.

Course taken by Mr. Pitt.

Mr. Pitt, whether right or wrong in the opinion he formed, resolved at once, in a direct and straightforward manner, to delay as long as possible the transfer of the power of the Crown to the Prince of Wales, now leagued with the Whigs, and looked upon with distrust by the nation on account of his profligate habits; — to limit materially the exercise of the royal prerogative in the Prince's hands; — to intrust the custody of the King's person, and the patronage of the royal household, to the Queen; — and, for these purposes, to contend that the two Houses of Parliament had the right to appoint a Regent, and to define and restrain the authority under which he was to act. The Prime Minister, assuming for certain that he himself would be dismissed on the accession of the Regent, and wishing to diminish the influence of his successor, had to struggle boldly for a crippled regency, — on the ostensible ground that the rights of the Sovereign supposed to be on the throne might otherwise be endangered.

Perplexity of the Lord Chancellor.

But the Chancellor was in sad perplexity. Although only a few weeks before he thought that he held the Great Seal for life, the dreadful thought now arose that it would be snatched from him by his rival, who had lately seemed for ever destined to the punishment of listening to the drowsy Serjeants in the Court of Common Pleas. But Thurlow began to consider with himself whether, having been Chancellor under Lord Rockingham as well as under Lord North, he might not be Chancellor under Mr. Fox as well as under Mr. Pitt. Mr. Fox had not yet returned from his Italian tour, and the Prince's affairs were under the direction of Sheridan and other Whig leaders, who were impatient to see the Prince installed as Regent, who highly disrelished the threatened restrictions, who perceived how useful Thurlow might be if

gained over in furthering these objects, who dexterously guessed at his longings and cogitations, and who formed a just estimate of his regard for honour and consistency.

His intrigue with Carlton House.

The intrigue with Thurlow is supposed to have been first suggested by Captain Rayne, the comptroller of the Prince's household. In a letter to Sheridan he said, "I think the Chancellor might take a good opportunity to break with his colleagues if they propose restriction. The law authority would have great weight with us, as well as preventing even a design of moving the city." In consequence, a negotiation with the Chancellor was opened, to which the Prince himself was a party. The legal dignitary seemed very placable, and not much disinclined to the doctrine that "the Prince ought to be declared unrestricted Regent," although he took special care, at first, to deal only in general verbal assurances, without entering into any specific engagement.* In this state of affairs, Captain Rayne, again addressing Sheridan, said, "I inclose you the copy of a letter the Prince has just written to the Chancellor and sent by express, which will give you the outline of the conversation with the Prince as well as the situation of the King's health. I think it an advisable measure, as it is a sword that cuts both ways, without being unfit to be shown to whom he pleases, but which I think he will understand best himself."

Bargain, that, in consideration of his continuing Chancellor, he should support the right of the Prince of Wales to without restrictions.

Thurlow, before he would proceed further, required a distinct promise that under the Regency he should retain the Great Seal. This at first caused much difficulty, for Lord Loughborough had been acting with the Whigs ever since the formation of the Coalition Ministry; a five years' opposition had made them forget all former differences, and it was well understood that he was to gain the grand object of his ambition if they ever came into power. Sheridan, however, advised that, without consulting him, Thurlow, who spurned at the Presidency of the Council, should be bought at his own

* "He studiously sought intercourse with the Prince of Wales, that he might have an opportunity of conveying to him his sentiments on his Royal Highness's situation. He recommended to him to lie upon his oars,—to show no impatience to assume the powers of royalty. He pointed out to him that if the King's illness were of any considerable duration, the regency must necessarily devolve upon him."—*Nick. Recoll.* 71.

price, and the bargain was nearly concluded that Thurlow, in consideration of being appointed Chancellor under the Prince when Regent, should support the right of the Prince to succeed to the Regency without restriction.

Mr. Fox arrives from Italy.

This was the state of affairs when Fox arrived from Italy. Recollecting what had happened during the Rockingham administration, he had an absolute horror of Thurlow, and heard of the promise given to him with the most bitter regret. However, as things had gone so far, he wrote the following letter to Sheridan, showing his distrust as well as his acquiescence: —

"Dear Sheridan,

His letter to Sheridan, reluctantly acquiescing in this arrangement.

"I have swallowed the pill — a most bitter one it was — and have written to Lord Loughborough, whose answer of course must be *consent*. What is to be done next? Should the Prince himself, you, or I, or Warren, be the person to speak to the Chancellor? The objection to the last is, that he must probably wait for an opportunity, and that no time is to be lost. Pray tell me what is to be done. I am convinced after all that the negotiation will not succeed, and am not sure that I am sorry for it. I do not remember ever feeling so uneasy about any political thing I ever did in my life."

On hearing of this intrigue, so fatal to his hopes, Lord Loughborough wrote the following letter to Sheridan, by which he tried to counteract it, without disclosing the deep resentment which he felt: —

"My dear S.

Letter of remonstrance from Lord Loughborough to Sheridan.

"I was afraid to continue the conversation on the circumstance of the inspection committed to the Chancellor, lest the reflections that arise upon it might have made too strong an impression on some of our neighbours last night. It does indeed appear to me full of mischief, and of that sort most likely to affect the apprehensions of our friends (Lord John for instance), and to increase their reluctance to take any active part.

"The Chancellor's object evidently is to make his way by

himself, and he has managed hitherto as one very well practised in that game. His conversations both with you and Mr. Fox were encouraging, but at the same time checked all explanations on his part, under a pretence of delicacy towards his colleagues. When he let them go to Salthill, and contrived to dine at Windsor, he certainly took a step that most men would have felt not very delicate in its appearance, and, unless there was some private understanding between him and them, not altogether fair, especially if you add to it the sort of conversation he held with regard to them. I cannot help thinking that the difficulties of managing the patient have been exerted or improved to lead to the proposal of his inspection (without the Prince being conscious of it), for by that situation he gains an easy and frequent access to him, and an opportunity of possessing the confidence of the Queen. I believe this the more from the account of the tenderness he showed at his first interview, for I am sure it is not his character to feel any. With a little instruction from Lord Hawkesbury, the sort of management that was carried on by means of the Princess Dowager in the early part of the reign may easily be practised. In short, I think he will try to find the key of the backstairs — and with that in his pocket, take any situation that preserves his access, and enables him to hold a line between different parties. In the present moment, however, he has taken a position that puts the command of the House of Lords in his hands.

"I wish Mr. Fox and you would give these considerations what weight you think they deserve, and try if any means can be taken to remedy this mischief, if it appears in the same light to you."

This surely must be an exaggerated picture of Thurlow's craft and duplicity; — otherwise, since the time of Richard III., these qualities have not been exhibited in such an extraordinary degree by any character in English history. The Chancellor is here represented as interfering with the proper management of the illustrious patient for his own sinister ends — when admitted to the presence of his afflicted Sovereign, although untouched by the melancholy spectacle, and only anxious about the personal advantages he might derive

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from it, hypocritically throwing himself into an agony of tears — plotting alike against his present colleagues, and the party whom he pretended to be about to join — and appearing by turns to be devoted to his old royal master — to the Queen — to the Prince — to the Tories, and to the Whigs — ready to betray them all.* However much this letter might strengthen the suspicions entertained by the Prince's friends of Thurlow's sincerity, it did not induce them to break off the treaty with him, and, if he supported them in the impending discussions in parliament, the Great Seal was to be his.

Mr. Pitt discovers Thurlow's duplicity.

The King being confined at Windsor, the Queen and the Prince in opposite interests, had both taken up their residence here, and here Mr. Pitt and the Ministers from time to time held their councils. These arrangements were highly convenient to Thurlow, for by going through cloisters and dark corridors to different sets of apartments in the Castle, he could hold a private conference with either party without letting it be known that he communicated with the other. Mr. Pitt was at first duped by such artifices, but suddenly came to the full knowledge of his colleague's perfidy. The exact circumstances of the discovery are variously related, although all accounts agree in stating that it took place at a meeting of the Ministers in Windsor Castle, and that it arose from a mistake that the Chancellor made respecting his hat.

* It must be admitted that Lord Loughborough is powerfully corroborated by the very picturesque account we have of "the weeping scene" from Miss Burney, who, then in attendance on the Queen, actually witnessed it: "It was decreed that the King should be seen both by the Chancellor and Mr. Pitt. The Chancellor went into his presence with a tremour such as before he had been only accustomed to inspire; and when he came out he was so extremely affected by the state in which he saw his royal master and patron, that the tears ran down his cheeks, and his feet had difficulty to support him. Mr. Pitt was more composed, but expressed his grief with so much respect and attachment, that it added new weight to the universal admiration with which he is here beheld." — *Madame d'Arblay's Diary*, part vii. 338.

The Chancellor seems to have possessed powers of acting grief not inferior to those of the player in *Hamlet*, who —

"But in a fiction, in a dream of passion,
Could form his soul so to his own conceit,
That from her working all his visage wann'd,
Tears in his eyes, distraction in's aspèct,
A broken voice, and his whole function suiting
With forms to his conceit."

Some say that he entered the room, having under his arm the Prince's hat, which he had in the hurry carried off from the Prince's closet instead of his own; — others, that he walked into the room without a hat, and that soon after one of the Prince's pages brought him his own hat, saying that his Lordship had left it behind when he took leave of his Royal Highness; — and others, that entering without his hat, and being reminded of it, he immediately said, he supposed he must have left it in another part of the Castle, where he had been paying a visit — whereupon the looks of those present immediately made him conscious of the disclosure he had made.* But I have received the following account of the discovery from a quarter entitled to the most implicit credit: — "When a Council was to be held at Windsor to determine the course which Ministers should pursue, Thurlow had been there some time before any of his colleagues arrived. He was to be brought back to London by one of them, and the moment of departure being come, the Chancellor's hat was no where to be found. After a fruitless search in the apartment where the Council had been held, a page came with the hat in his hand, saying aloud, and with great *naïveté*, 'My Lord, I found it in the closet of His Royal Highness the Prince of Wales!' The other Ministers were still in the Hall, and Thurlow's confusion corroborated the inference which they drew."

Story of Thurlow being betrayed by his hat.

Mr. Pitt, though now fully aware of his designs, could not immediately throw him off, and still seemed to the public cordially to co-operate with him, — but thenceforth withdrew all confidence from him, and intrusted to Lord Camden the conduct in the House of Lords of all the measures for the establishment of the Regency.

Mr. Pitt withdraws all confidence from Thurlow, and employs Lord Camden to carry through the measures for a Regency.

The first debate upon the subject was when, after the examination of the physicians, proving the King's incapacity personally to exercise the functions of government, Lord Camden moved for a committee to search for precedents. Lord Loughborough, on whose legal and constitutional advice the Whigs acted, now reprobated the doctrine broached

Dec. 11. 1788.

Debate on Lord Camden's mo-

* Moore's Life of Sheridan, ii. 31.; Law. Mag. vii. 73, 74.

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tion for a committee to search for precedents.

in the other House, "that the Prince of Wales, the heir apparent to the throne, had no more right to take upon himself the government, during the continuance of the unhappy malady which incapacitated his Majesty, than any other individual subject." He contended strenuously that the regency was not elective; that the two Houses could not interfere with the appointment of the person to exercise the functions of royalty, except upon a total subversion of the government, as at the Revolution, or upon the failure of the royal line, by the King dying without an heir; that as the two Houses at present confessedly could not pass a turnpike act, much less could they pass an act which might produce a change of the dynasty to fill the throne; and that the heir apparent had a right, during the interruption of the personal exercise of the royal authority, to assume the reins of government — not rashly or violently — but on the authentic notification to him by the two Houses of his Majesty's unfortunate incapacity.

Lord Thurlow's temporising speech.

Thurlow, on this occasion, was sorely perplexed as to the course he should pursue. Although Dr. Willis gave hopes of the King's speedy recovery, the general opinion at this time was that his malady was incurable — in which case the Prince of Wales must ere long be Regent, with all the patronage of the Crown. He probably was inclined to assert the Prince's right in still more peremptory terms, and to outbid his rival for the Prince's favour. But he could not do so without openly breaking with Mr. Pitt, who had the entire confidence of the Queen, and was sure to be more powerful than ever if his Majesty should indeed be restored. He therefore contented himself, for the present, with appearing to oppose — but opposing very gently — Lord Loughborough's arguments, saying, "that the doctrine of the Prince's right was new; that the discussion was premature; that the question ought not to be in any degree preoccupied; that such a debate would only afford a subject for a frivolous paragraph in a newspaper; that their Lordships had begun at the wrong end, trying to draw the conclusion before they had settled the premises; that no objection could possibly be made to the motion of the President of the Council for a

committee to inquire; and that, it being impossible to separate the natural and political character and capacity of the King, while the crown remained firmly fixed on his Majesty's head, the appointment of a Regent must prove a consummation beyond expression difficult."* The motion was carried without a division, and for a little while longer Thurlow contrived to keep on decent terms with both parties, giving each hopes of his support and enjoying the chance of the favour of both. But this double-dealing led him daily into greater perplexities: he saw the danger in a protracted struggle of being himself disgraced which ever side might prosper, and it is said that he had exclusive information of some symptoms in his Majesty's health, which justified a more probable hope of his recovery than had been hitherto entertained.

Information to Lord Thurlow of the King's probable recovery.

Dec. 15. Thurlow's imprecation upon himself if he should forget his Sovereign.

Accordingly the next time the subject was brought forward in the House of Lords, the Duke of York having made a very sensible speech, renouncing, in the name of his brother, any claim not derived from the will of the people, and lamenting the dreadful calamity which had fallen upon the royal family and upon the nation, — the Lord Chancellor left the woolsack seemingly in a state of great emotion, and delivered a most pathetic address to the House. His voice, broken at first, recovered its clearness, — but this was from the relief afforded to him by a flood of tears. He declared his fixed and unalterable resolution to stand by a Sovereign who, through a reign of twenty-seven years, had proved his sacred regard to the principles which seated his family on the British throne. He at last worked himself up to this celebrated climax: — "A noble Viscount (Stormont) has, in an eloquent and energetic manner, expressed his feelings on the present melancholy situation of his Majesty, — feelings rendered more poignant from the noble Viscount's having been in habits of personally receiving marks of indulgence and kindness from his suffering Sovereign. My own sorrow, my Lords, is aggravated by the same cause. My debt of gratitude is indeed ample for the many favours which have been

* 27 Parl. Hist. 672.

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Wilkes's retort.

graciously conferred upon me by his Majesty; AND WHEN I FORGET MY SOVEREIGN, MAY MY GOD FORGET ME!"* "GOD FORGET YOU!" muttered Wilkes, who happened then to be seated on the steps of the throne,—eying him askance with his inhuman squint and demoniac grin,—"GOD FORGET YOU! HE'LL SEE YOU D——D FIRST."

Dec. 23. Thurlow's attack on Lord Loughborough for supporting the rights of the Prince.

When the resolution to which the Commons had agreed was moved, "That it is the right and duty of the Lords Spiritual and Temporal, and Commons of Great Britain, now assembled, and lawfully, fully, and freely representing all the estates of the people of this realm, to provide the means of supplying the defect of the personal exercise of the royal authority, arising from his Majesty's indisposition, in such manner as the exigency of the case may appear to them to require," and Lord Rawdon (afterwards Marquis of Hastings) having moved an amendment, "That an humble address be presented to his Royal Highness the Prince of Wales, praying his Royal Highness to take upon himself, as sole Regent, the administration of the executive government in the King's name during his Majesty's indisposition," Thurlow, without any reserve, supported the resolution, and inveighed against the amendment. Knowing well that it had been framed very carefully by Lord Loughborough, who had spoken ably in defence of it, he said, "I am glad to think that the words of this amendment cannot have been supplied by the noble and learned Lord, the Chief Justice of the Common Pleas, for they are not only irreconcileable with the arguments of that great Magistrate, but they convey no distinct or precise meaning whatever. I wish that some one, who professes to understand them, had explained their meaning, and given us something like a reason to show their propriety. I beg to know, what is the meaning of the term 'REGENT?' Where shall I see it defined? in what lawbook, or in what statute? I have heard of 'Grand Justiciars,' of '*Custodes Regni*,' of 'Lieutenants for the King,' of 'Guardians,' of 'Protectors,' of 'Lords Justices;' but I know nothing of the office or functions of a 'REGENT.' To what end, then, would it be to ask the Prince to take upon

* 27 Parl. Hist. 680.; Ann. Reg. 1789, p. 125.

himself an office, the boundaries of which are wholly unascertained? The amendment, to be sure, states that what the Prince, as sole Regent, is to be prayed to take upon himself, is 'the administration of the executive government.' Here, again, the expression is dark and equivocal. What is meant by the 'executive government?' Does it mean the whole royal authority? Does it mean the power of legislation? Does it mean all the Sovereign's functions, without restriction or limitation of any kind? If this had been fully expressed, would any noble Lord have contended that it did not amount to the actual dethroning of his Majesty, and wresting the sceptre out of his hand? No man entertains a higher respect for the Prince than I do; I wish him as well as those who affect to be more mindful of his interests; but I deny that, as heir-apparent, he has any inherent right to the regency. It is our duty to preserve the Crown safe on the head of the Sovereign, so that when, in the due course of nature, it shall descend to the Prince of Wales, he may receive it solid and entire, such as it was when worn by his Sire." On a division, the amendment was negatived by a majority of 99 to 66.*

Feb. 3. 1789.

Next a proceeding took place, which I will not venture to condemn, but which was certainly very anomalous, and, I conceive, unnecessary; for if the two Houses had the right claimed by them to elect a Regent, why should they not have passed an ordinance for that purpose by their own mere authority, without the false assertion that it was by a regular act of legislation, to which the King was a party? † There is nothing better settled by our law, than that the Great Seal can only be used to express the will of the Sovereign on the throne, and infinite precautions are resorted to for the purpose of preventing the use of it without his personal intervention. ‡ To counterfeit the Great Seal is high treason, — and to affix the true Great Seal to any instrument without the King's authority is not subjected to the like pe-

Expedient of using the Great Seal without the King's authority.

* 27 Parl. Hist. 852—891.

† The joint resolution of the two Houses ordering the commission, required that the authority for putting the Great Seal to it should be thus falsely stated: "By the King himself, with the advice of the Lords Spiritual and Temporal and Commons assembled, according to the prorogation aforesaid."

‡ See ante, Vol. I. Introduction.

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nalty, only because the offence is supposed to be impossible. But while George III. was under the care of Dr. Willis, Edward Lord Thurlow affixed the Great Seal of Great Britain, authorising certain prelates and peers to open the parliament in the King's name, and to declare the causes of parliament being summoned.

On account of a severe fit of illness, the Chancellor was not himself present at the ceremony of opening the parliament under the authority of the "*Phantom*," and the Lords Commissioners' speech was delivered by Ex-chancellor Earl Bathurst. *

At this time, although Thurlow had ceased to have any communication with Carlton House, and Mr. Pitt looked upon him with great suspicion, he enjoyed the highest confidence and favour with the Queen, and she implicitly followed his advice in all her proceedings respecting the formation of the Regency, — that she might have the custody of the King's person, and the nomination to all the offices in the household. The Prince of Wales having remonstrated with her upon the danger to the monarchy from so materially reducing the power and influence of the Crown, she employed Thurlow to prepare an answer in her name. The following note conveyed her thanks to him for his exertions on this occasion: —

Letter of thanks from Queen Charlotte to Thurlow.

"My Lord,

"I am this instant returned from the King, which is the reason of your servant being detained so long. I return you many thanks for the trouble you have taken in forming so useful an answer for me to the Prince of Wales, which I intend sending to-morrow morning. I am extremely sorry to hear of your indisposition, and I hope you will believe

* 27 Parl. Hist. 1163. One of the most ludicrous difficulties in which the House of Commons was now involved arose from the sudden death of Speaker Cornwall, and the election of Mr. W. Grenville to succeed him. Regularly the new Speaker should have been approved by the King, and should have prayed for a continuance of the rights and privileges of the Commons. Burke said, "They had just set up a 'phantom' to represent the Great Seal, and now their Speaker was to bow before it, and to claim their rights and privileges from a creature of their own creation." However, they altogether waived the ceremony. — 27 Parl. Hist. 1161.

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me when I say that nobody does more sincerely interest themselves in your recovery and welfare than myself.

"CHARLOTTE.

"Kew, January the 31st, 1789."*

Thurlow again in tears.

When the Commons sent up the Regency Bill (to which it was intended to give the royal assent by the "Phantom"), Thurlow strenuously supported all the restrictions put upon the power of the Regent, and the clause vesting in the Queen the nomination of all the officers of the household. Upon the last point he was particularly eloquent and touching. "My opinion, my Lords," said he, "is, that all which belongs to the household must, at the same time with the care of the King's person, be put under her Majesty's control and management. To preserve the King's dignity, all his royal attendants must be kept about him. If you deprive the King of his accustomed splendour, you may as well treat him as a parish pauper — put him on board wages, or send him to one of those receptacles that take in unfortunate people at a small charge. This would be the only way to prevent the royal household going to the Queen— but then you are losing your time in contriving means of restoring his Majesty to the throne on his recovery, for you never can expect a cure. Remember, my Lords, that the Queen is to have the care of her royal patient, not as a wretched outcast, an obscure individual, without friends, without a name, without reputation, without honour — but as a King to whom his people look up with loyalty, with affection, and with anxious wishes that he may soon be enabled to reascend his throne, and again spread blessings over the land he governs. As far as my voice can go, and I shall lift it up loudly and sincerely," [Here he rolled out his sentences majestically, and shook his awe-inspiring eyebrows,] "I claim for the King all the dignity that ought to attend a royal person, who is entitled to every comfort that can be administered to him in the hour of his calamity. And who shall dare to refuse my demand? It would, it ought, and it must mortify the Queen if the King were turned

* The original, in a very distinct pretty hand, lies before me. Queen Charlotte not only gained a familiar acquaintance with our language, but became, in all respects, a good Englishwoman.

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over to her in an unfeeling and irreverent fashion—destitute of every mark and remnant of royal state. Is there a man who hears me — who possesses the sensibility common to every human breast, who does not sympathize with her Majesty?" [Here he began to be much affected.] "I protest to God I do not believe there is a noble Lord in the House who wishes to reduce to such a forlorn condition a King labouring under a misfortune, equal to any misfortune that ever happened since misfortune was known in the world. To hesitate about giving the household to the Queen, would show a total extinction of pity for that royal sufferer, whose calamity entitles him to the most unlimited compassion, and even to increased respect:

> 'Deserted in his utmost need
> By those his former bounty fed.'" *

Here the orator burst into tears, and he resumed his seat on the woolsack as if still unable to give vent by language to his tenderness.†

Thurlow's great popularity for his loyal attachment to his Master.

These exhibitions were probably pretty justly appreciated in the House of Lords where the actor was known, and they must have caused a little internal tittering, although no noble Lord would venture openly to treat them with ridicule. But they made a prodigious impression on the public. His Majesty was now very popular, particularly contrasted with the heir apparent, and his calamity did excite deep sympathy in the great bulk of the nation. There was a general apprehension that, if the Prince's friends once got into power, the good old King would soon be treated as irrecoverable. Thurlow was therefore hailed as a champion of the rights of the Sovereign, and he was supposed to be disinterestedly standing up for his afflicted Master, designedly and nobly

* 27 Parl. Hist. 1081, 1082. 1085.

† Thurlow alluded to Burke's speech in the House of Commons: "It had been asked, would they strip the King of every mark of royalty, and transfer all the dignities of the Crown to another person? No, Heaven forbid! where the person wearing the crown could lend a grace to those dignities, and derive a lustre from the splendour of his household. But did they recollect that they were talking of a sick King, of a monarch smitten by the hand of Omnipotence, and that the Almighty had hurled him from his throne and plunged him into a condition which drew down upon him the pity of the meanest peasant in his kingdom?" Burke was called to order for these words, and certainly they are not in the best taste.

sacrificing all prospect of power for the rest of his days. Men compared him to the Earl of Kent in Lear, and, thinking they had found in real life an exemplification of the devoted attachment which the poet had imagined, were delighted to see the friendship which had long subsisted between the Sovereign and his Chancellor, though obscured in the alienated mind of the afflicted George, still burning in the honest bosom of the faithful Thurlow.*

Sarcasms thrown out against him.

Some, however, ironically exclaimed,—

> —— "He cannot flatter, he!
> An honest mind and plain — he must speak truth!
> — These kind of knaves I know, which in this plainness
> Harbour more craft and more corrupter ends
> Than twenty silly ducking observants,
> That stretch their duties nicely."

Burke's attack upon him in the House of Commons.

A few days after this last lachrymose scene, Burke said openly in the House of Commons:—"The Lords had perhaps not yet recovered from that extraordinary burst of the pathetic which had been exhibited before them the other evening; they had not yet dried their eyes or been restored to their former placidity, and were unqualified to attend to new business. The tears shed in that House on the occasion to which he alluded, were not the tears of patriots for dying laws, but of Lords for their expiring places. The iron tears which flowed down Pluto's cheek rather resembled the dismal bubbling of the Styx than the gentle murmuring streams of Aganippe."†

Burke's caricature of Thurlow.

On another occasion Burke descended so low as to draw a caricature likeness of the Chancellor for the amusement of the House of Commons. Commenting on the scheme by which the phantom of royalty was to be raised by touching the Great Seal, he said—"What is to be done when the Crown is in a deliquium? It was intended, he had heard, to set up a man with black brows and a large wig, a kind of scarecrow to the two Houses, who was to give a fictitious assent in the royal name, and this to be binding on the

* Thus wrote his old companion Cowper, who might have known him better: "In *his* counsels, under the blessing of Providence, the remedy is, I believe, to be found, if a remedy there be. *His* integrity, firmness, and sagacity, are the only human means that seem adequate to the great emergence."

† Burke's Speeches, iii. 382.

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people."* He added,—"I have given my allegiance already to the House of Hanover. I worship the Gods of our glorious constitution, but I will not worship PRIAPUS."

Disappointment of the Whigs by the King's recovery.

Alas! the Whigs were disappointed, and the laugh was finally with the object of their vituperation. When the Regency Bill, with its restrictive clauses, had been read a second time in the House of Lords, and had made some progress in the Committee, rumours were publicly spread that the King's malady was abating, and on the 19th of February, as soon as prayers were over, the Lord Chancellor left the woolsack, and said,—"the intelligence from Kew was that day so favourable every noble Lord would agree with him in acknowledging that it would be indecent to proceed farther with the bill when it might become wholly unnecessary. Amidst the general joy which the expectation of his Majesty's speedy return must occasion, he would therefore move the adjournment of the Committee." This was agreed to, and the House rose.

Feb. 19. 1789.

Feb. 24. Parliament regularly opened under a commission by the King's authority.

On a subsequent day the Chancellor declared that he had lately been as much as an hour and a quarter with the King, and that very day a full hour—when he had found his mind to be clear and distinct, and that he appeared perfectly capable of conversing on any subject that might be proposed to him. The Committee was several times adjourned, and at last, on the 10th of March, there was produced a commission to which the Great Seal had been regularly put, under a warrant, signed by the King, authorising the same Commissioners named in the sham commission "to open and declare certain farther causes for holding this parliament." Then the Commons being summoned, and the Commission read, the Chancellor, one of the Commissioners, said, "His Majesty being, by the blessing of Providence, recovered from the severe indisposition with which he has been afflicted, and being enabled to attend to the public affairs of this kingdom, has commanded us to convey to you his warmest acknowledgments for the additional proofs which you have given of your affectionate attachment to his person, and of your zeal-

* Burke's Speeches, iii. 361.

ous concern for the honour and interest of his crown, and the security and good government of his dominions."

A.D. 1789.

Thurlow's reputation injured with the public.

Thurlow retained the Great Seal, but his character was seriously injured. Although he impressed on the Queen, and on the King when recovered, a conviction of his zeal to comply with their wishes, his colleagues, as well as his opponents, were fully aware of his insincerity, and by degrees the full extent of his double-dealing during the King's illness became known to the whole nation.

His hatred of Mr. Pitt.

From this time he fostered a deep enmity to Mr. Pitt, which he was at no pains to conceal. Considering himself the personal "friend," and most cherished minister of the King,—boasting that the House of Lords was entirely under his control,—and unconscious of his reputation with the public,—he greatly over-estimated his political importance, and was disposed to set himself up as the rival of the man, who by splendid eloquence and spotless character now ruled the House of Commons, and who, with the exception of the Whigs (lamentably reduced in numbers) was respected and supported by the whole nation.

Mr. Pitt's representation to the King as to Thurlow's conduct.

The Prime Minister had no desire to quarrel with the Chancellor, but was resolved to keep him under due subordination. For the present, therefore, he contented himself with submitting a good-humoured representation to the King, which admitted the Chancellor's abilities and services, but hinting at his waywardness, stated how desirable it was that there should be entire cordiality among the members of the cabinet. "The King wrote to Thurlow on the subject, and received such an answer as led him confidently to hope that Mr. Pitt would have no reason to complain again on this subject." *

Nov. 1789.

* Tomlin's Life of Pitt, ii. 513. It would appear from the "Rolliad," that even before the King's illness the public believed that Thurlow went on very uncomfortably with the cabinet, and that there was a great desire to turn him out. In the "JOURNAL of the Right Hon. HENRY DUNDAS" we have the following entry:—"March 9th, 1788. Got Thurlow to dine with us at Wimbledon—gave him my best Burgundy and blasphemy, to put him into good humour. After a brace of bottles, ventured to drop a hint of business—Thurlow damned me, and asked Pitt for a sentiment [toast]. Pitt looked foolish—Grenville wise." After an account of the other members of the cabinet, he proceeds with the Chancellor. "Thurlow very queer. He swore the bill [India Declaratory Bill, then pending in parliament] is absurd, and a correspondence with those cursed directors damned stupid. However, will vote

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For two or three years the Government went on pretty smoothly, Thurlow, although discontented and sulky, abstaining from any public attack on the Government — but watching for an opportunity of showing his sense of the supposed ingratitude of the young man he pretended to have patronised and promoted.

Thurlow's conduct for the next three years.

During this interval the Chancellor hardly ever spoke in parliament. In the first session after the King's recovery he did not once interfere for the Government, unless in repressing an irregular conversation commenced by Lord Stormont, about the treaty with Prussia *; and he testified his contempt for the part taken by his colleagues in the other House by throwing out, on the first reading, Mr. Beaufoy's bill, which Mr. Pitt had sanctioned in the Commons for celebrating the centenary of the Revolution. †

But (wonderful to relate!) he allowed to pass through the House without opposition a bill, remarkable as the first that passed, to mitigate the atrocious severity of our criminal code — enacting that women convicted of high or petty treason, instead of being burnt to death, as they had hitherto been, should be hanged. ‡

June 3. 1790.

During the whole of the following session, he never opened his mouth, except upon Lord Hawkesbury's complaint of having been obstructed by the military when coming down to attend the service of the House. The Lord Chancellor took up the matter very warmly, insisting that, for such an

and speak with us. — Pitt quite sick of him — says 'he growls at every thing, proposes nothing, and supports every thing.' N. B. Must look out for a new Chancellor — Scott might do, but cants too much about his independence and his conscience — what the devil has he to do with independence and conscience? — besides, he has a snivelling trick of retracting when he is caught in a lie — hate such puling fellows. George Hardinge not much better — must try him though — will order him to speak on Wednesday." — *Rolliad*, 22d ed. p. 516. George Hardinge had not answered, for he died a Welsh Judge.

* 28 Parl. Hist. 138.

† The motion (so unusual and so affronting to the House of Commons) for throwing out the bill in this stage being made by the Bishop of Bangor, was warmly supported by the Lord Chancellor, and carried by a majority of 13 to 6. — 28 Parl. Hist. 296. The deliverance of the nation from slavery and popery was celebrated in Scotland, without an act of parliament, by the authority of the Church, when Dr. Robertson delivered the sermon in the hearing of Lord Brougham, then a boy — of which his Lordship has given us such an interesting account in the Life of his distinguished kinsman. — *Men of Letters*, 270.

‡ See 4 Adolph. 484.

insult, no apology could be accepted, and that their Lordships must, in justice to themselves, institute inquiries for the purpose of discovering and punishing the delinquents.*

Thurlow displaced from his position as organ of the Government in the House of Lords.

Since the formation of the present Government, Thurlow had hitherto been considered its organ in the House of Lords; but Mr. Pitt declared, that he was never quite certain what part in debate the Chancellor would take, and less quiet times being in prospect, he was very unhappy lest some important measure, on which depended his reputation and his stability, might be defeated, after being carried triumphantly through the House of Commons.† He therefore resolved, at the meeting of the new Parliament, in Nov. 1790, to have in the House of Lords a new leader, in whom he could place confidence. The person proposed for this post was Mr. William Grenville, who had been Speaker of the House of Commons, and not giving satisfaction in that office had been taken into the Cabinet, and was giving striking proofs of his talents as a statesman.‡ The King unwittingly thinking that the arrangement would be agreeable to the Chancellor, by saving him trouble, at once consented to it, without consulting him, and Lord Grenville took his seat on the ministerial bench. Thurlow was deeply mortified, but having no plausible cause of quarrel, he for the present concealed his chagrin. Still he persuaded himself that he held the first place in the King's favour, and he hoped that he might, ere long, be able to avenge himself of such a slight. "His coolness and reserve towards Mr. Pitt increased, although there was no difference of opinion between them on any political question."§

Lord Grenville substituted for him.

Debate on the Russian armament.

For a season the Chancellor concealed his resentment, and he even had such a control over his feelings as to support

* 28 Parl. Hist. 874.

† The Marquis of Stafford, and other common friends, had repeatedly remonstrated with Thurlow respecting his demeanour to Pitt, but entirely without effect. — *Tomline's Life of Pitt*, ii. 513.

‡ I have heard the late Lord Holland several times say, that considerable abilities are not well adapted to the chair of the House of Commons; for all the Speakers in his time had been pronounced "excellent," except Lord GRENVILLE, and he failed, although the only clever man among them.

§ Tomline's Life of Pitt, ii. 513.

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Lord Grenville on the new leader's first appearance in that character in the House. A discussion arose respecting a very doubtful measure of Mr. Pitt, which he was soon obliged to abandon — the armament against Russia, on the taking of Ockzakow and Ismael. Lord Grenville moved the address of thanks in answer to a message from the Crown, announcing, that in consequence of his Majesty not having succeeded in bringing about a satisfactory adjustment of the differences between the Sublime Porte and the Empress Catherine, he deemed it necessary to increase his forces by sea and land. Earl Fitzwilliam having moved an amendment censuring the conduct of the Government, Lord Loughborough made a speech, memorable as containing one of the earliest expressions of opinion in Parliament on the French revolution, which he still regarded with hope and with favour. Having inveighed bitterly against the general policy of Ministers, who seemed disposed wantonly to interfere with the concerns of foreign states all over the world, and particularly condemned the threatened rupture with Russia, he highly eulogised the magnanimous declaration of the National Assembly of France, that "they would for ever avoid wars on speculative and theoretical points,"— which ought to have suggested to us a wiser and more elevated system than that which we were pursuing. He said, "the revolution in France presents to us the means of reducing our establishments, of easing the people, and of securing to the nation, for a length of years, the blessings of peace. But instead of this, we ransack the most obscure corners of the earth for enemies, and wish to rush into hostilities against a great empire which is our natural ally, and the present enlightened sovereign of which feels for this country sentiments of unmixed respect and good will."

Earliest notice in parliament of the French revolution.

March 29. 1791.

Speech by Lord Loughborough in praise of it.

Thurlow's defence of the Russian armament.

The Lord Chancellor, stimulated probably by personal rivalry and dislike, left the woolsack, and answered this speech in a very contemptuous tone. He abstained from any general defence of Ministers, but he insisted that the objections to the proposed address were wholly frivolous, as the Crown was entitled to confidence on such an emergency, and no noble Lord, by agreeing to the address, was pledged

to the wisdom of any measure which the responsible advisers of the Crown might consequently recommend. In putting a construction on our treaties with Russia and Prussia, he affected a modesty which I do not understand, saying that "on subjects of state he begged to be understood as speaking with deference to statesmen." However, somewhat to countenance the notion that he considered himself a mere lawyer, and no statesman, he argued that their Lordships should not look merely to the letter of their contract with foreign nations, but should put *an equitable interpretation upon it;* giving as an illustration, that, although we only engaged to defend Prussia when attacked,—if we saw Russia surrounding Poland in a manner dangerous to the interests of Prussia, we were bound to interfere for the benefit of our ally. Lord Loughborough's compliments to the French revolution he treated with the utmost scorn, asserting "that the National Assembly had never assumed a bold or manly aspect, and that its proceedings were, in his mind, a tissue of political fopperies, as distant from true wisdom as from morality and honour." *

His abuse of the French revolution.

There being now a new Parliament, the important constitutional question arose, whether Hastings's impeachment was abated by the dissolution of the House of Commons which had commenced it? All impartial lawyers were of opinion that it was now to be considered as pending *in statu quo;* and after a committee appointed to search for precedents had made their report to this effect, Lord Porchester moved, "that a message be sent to the Commons, to acquaint them that this House will proceed upon the trial of Warren Hastings, Esquire."

Q. Whether Hastings's impeachment was abated by the dissolution of parliament?

May 16.

This was strongly opposed by the Lord Chancellor, who contended that the prosecution was at an end with the prosecutors; that Mr. Hastings's recognisance had expired, so that he, being neither in prison nor under bail, he was not subject to their jurisdiction; and that all precedents were in his favour, as well as all reasoning. As to the report of the committee, he had read it with attention, and it seemed to

* 29 Parl. Hist. 45.

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him to be little short of demonstration, that, by the usage and law of that House, an impeachment was universally understood to abate at a dissolution.—Lord Loughborough, however, clearly proved that the impeachment, being "in the name of all the Commons of England," was still to be carried on in their name by their present representatives; that the House of Lords is a permanent judicial tribunal, deciding in one parliament appeals and writs of error brought before it in a preceding parliament; that the assumption of the defendant's recognisance being at an end was a mere begging of the question; that the precedents, when rightly understood, negatived the doctrine of abatement; and that to sanction the doctrine contended for, would be to put it in the power of the executive government at any time, by a dissolution of parliament, to screen a delinquent minister from deserved punishment. Lord Grenville, and most of the government Peers, divided against the Chancellor, and he was beaten by a majority of 66 to 18.*

Thurlow throws out Mr. Fox's Libel Bill.

But he succeeded this session in defeating Mr. Fox's Libel Bill under pretence that there was not time to consider the subject, although, to the high credit of Mr. Pitt, who had supported the bill in the Commons, Lord Grenville anxiously declared that "he should be extremely sorry if it were to go forth to the world that the administration were against it, or unfriendly to the rights of juries." †

The last session of parliament in which he sat as Chancellor.

Thurlow's official career was now drawing to a close. On the 31st of January, 1792, he, for the last time, delivered into the hands of the King the speech to be read on the opening of parliament. It is exceedingly difficult to understand the wayward conduct during this session which led to his dismission.

Difficulty of understanding his views and objects.

I have in vain tried to obtain a satisfactory explanation of it by studying contemporary memoirs, and consulting some venerable politicians whose memory goes back to this æra. He had formed no connection with the Whigs;—he was more than ever estranged from their society, and opposed to their principles, — and he could not have had the remotest intention of going over to them. I can only con-

* 29 Parl. Hist. 514—545. † Ib. 726—741.

jecture that, as Mr. Pitt's reputation had been a little tarnished by the failure of the Russian armament, and he had not yet been strengthened by the accession of the Duke of Portland, Burke, and the alarmist Whigs, which soon followed,—Thurlow, still reckoning in a most overweening manner on his personal favour with the King, sincerely thought that he could displace the present Premier, whom he regarded as little better than a Whig, and that he could establish a real Tory government, either under himself, or some other leader, who would oppose the Libel Bill, and all such dangerous innovations, and rule the country on true old Church-and-King maxims.

He opposes Mr. Pitt's Bill for establishing the Sinking Fund.

The occasion he selected for commencing hostilities was the introduction into the House of Lords of Mr. Pitt's celebrated Bill "To establish a Sinking Fund, for the redemption of the National Debt." This measure, which has proved a failure, and which almost all financiers now condemn, was considered by its reputed author, his friends, and the bulk of the nation, as the greatest effort of his genius, and a lasting monument of his fame.* He staked upon it the stability of his administration. It passed the Commons with applause. But in the Lords, "to the astonishment of every one, it was violently reprobated by the Lord Chancellor."† His colleagues must have been even more startled than the rest of mankind; for he had not offered the slightest objection when the measure was considered in the Cabinet, and when he left the woolsack to throw it out, he had not hinted to any of them an intention to say a word against it. In truth he had not discovered its fallacy, and he made no attempt to show that, by the creation of additional stock and additional taxation to supply the sinking fund, the aggregate amount of the national debt would be encreased with diminished means of bearing the burden of it. He almost entirely confined himself to a rather futile objection, that an unconstitutional attempt was made to bind future parliaments. No one believed that future parliaments could be bound to provide for the sinking fund, if they should think that the money to be raised had better be left to

* The scheme was in fact Dr. Price's, and was the worst of three which he suggested.

† Tomline's Life of Pitt, ii. 513.

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"*fructify* in the pockets of the people;" but the inability to insure a perpetual adherence to the plan could be no solid argument against attempting it; for, if sound and beneficial, there was every reason to expect that it would become more and more popular. But Thurlow believed that he had gained a complete triumph by thundering out most impressively and awfully, "that the bill exhibited a degree of presumption and arrogance in dictating to future parliaments, which he trusted the House would never countenance. None but a novice, a sycophant, a mere reptile of a minister, would allow this act to prevent him from doing what, in his own judgment, circumstances would require at the time; and a change in the situation of the country may render that which is proper at one time inapplicable at another." He thus concluded,—"In short, the scheme is nugatory and impracticable — the inaptness of the project is equal to the vanity of the attempt." Such observations were probably better adapted to his audience than others more profound, and he had nearly succeeded in defeating the bill — which must have been followed by the retirement of Mr. Pitt. On the division, it was carried only by a majority of six.*

Mr. Pitt insists on his dismissal.

Next morning Mr. Pitt wrote a letter to the King, the tenor of which we may pretty well guess at from the following letter, which he at the same time sent to the Lord Chancellor.

"Downing Street, Wednesday, May 16. 1792.

"My Lord,

Mr. Pitt's letter to him.

"I think it right to take the earliest opportunity of acquainting your Lordship, that being convinced of the impossibility of his Majesty's service being any longer carried on to advantage while your Lordship and myself both remain in our present situations, I have felt it my duty to submit that opinion to his Majesty; humbly requesting his Majesty's determination thereupon.

"I have the honour to be, &c.

"W. Pitt."

* This very important debate is not even noticed in the Parliamentary History, and the only account we have of it is in a very wretched book, Tomline's "Life of Pitt." See vol. ii. 513.; Gifford's Life of Pitt, iii. 187.

The coming storm had been foreseen by several, and the result had been distinctly foretold by that sagacious statesman, Lord North, who a short time before had said to a person peculiarly intimate with Lord Thurlow, "Your friend thinks that his personal influence with the King authorises him to treat Mr. Pitt with *humeur*. Take my word for it, whenever Mr. Pitt says to the King, 'Sir, the Great Seal must be in other hands,' the King will take the Great Seal from Lord Thurlow, and never think any more about him." And so it turned out. The King at once yielded to Mr. Pitt's wishes, and caused an intimation to be conveyed to Lord Thurlow that "His Majesty had no longer any occasion for his services."

Lord North's sagacity in foreseeing the dismissal of Thurlow.

Thurlow dismissed.

We are not informed of the channel through which the dismissal was announced to the Chancellor, but the act was a dreadful surprise to him, and the manner of it deeply wounded his pride. "I have no doubt," writes the same person to whom Lord North had uttered his prophecy, "that this conduct of the King was wholly unexpected by Lord Thurlow: it mortified him most severely. I recollect his saying to me, 'No man has a right to treat another in the way in which the King has treated me: we cannot meet again in the same room.'" *

Thurlow's indignation against the King.

However, as Mr. Pitt was not then provided with any successor; as great inconvenience would have arisen from putting the Great Seal into commission during the sitting of parliament, and it was desirable that the present holder of it should continue in office a short time to give judgment in causes which had been argued before him, an arrangement was made that he should not surrender it till the day of the prorogation.

Arrangement that he should continue Chancellor till the end of the session.

Meanwhile, he tried to set the King against Mr. Pitt and

He tries to set the

* Nich. Recoll. 347. The author adds: "It is well known that for some years before Lord Thurlow was a second time deprived of the Great Seal he and Mr. Pitt had not lived on pleasant terms. I never could discover the cause of this. I recollect Lord Thurlow's having once said to me — 'When Mr. Pitt first became Prime Minister, it was a very unpleasant thing to do business with him; but it afterwards became as pleasant to do business with him as with Lord North.' Lord Thurlow strongly disapproved of Mr. Pitt's conduct on the impeachment of Mr. Hastings: how far that contributed to excite ill humour in him, I cannot say."

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King against Mr. Pitt.

the Government from which he was retiring, by his violent and somewhat artful opposition to a bill which they had introduced "for encouraging the growth of timber in the New Forest." This provided for the inclosure of some crown land to be planted with trees for the use of the navy, and suspended or mitigated the forestal rights of the Crown over a large district in Hampshire, — these rights being of no practical value to the sovereign, and very injurious to the subject. The bill passed the Lower House with the praise of all parties. But when it stood for a second reading in the Lords, "the Lord Chancellor objected to what he called the *supposed* principle of the bill, for he would not admit that it was founded on any *real* principle, as tending, under false pretences, to deprive the Crown of that landed property to which it was entitled by the constitutional law of the country. He maintained that it was of consequence that the King should have an interest in the land of the kingdom. He allowed the imperfection of the forest laws, but he insisted that the defects of this bill were infinitely more pernicious. In conclusion, he attacked the framers of the bill, his colleagues in office, in the most pointed and most unjustifiable manner. He openly charged them *with having imposed upon their Sovereign*, and did not scruple to assert that if the members of that House who were the hereditary councillors of the Crown did not interfere in opposition to those who had advised this measure, *all was over*." * Nevertheless the bill passed, and the resistance to it being explained to his Majesty to be merely an ebullition of spleen from him who had so long piqued himself on the appellation of "the King's friend," no alarm was excited in the royal bosom, and the resolution to dismiss him remained unaltered.

His attempt fails.

Justification of the King for taking part against Thurlow.

Seeing his fate inevitable, instead of quietly submitting to it, he complained loudly of the ingratitude and faithlessness of Princes. But, even without regarding the double part which Thurlow had acted respecting the regency, all must agree that George III. could not properly have hesitated in taking part with Mr. Pitt in this controversy. The wanton desertion of

* Gifford's Life of Mr. Pitt, iii. 187.; Moore's Life of Sheridan, ii. 273.

those who had claims upon him by their services could not justly be imputed to this monarch during any part of his reign.

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Thurlow defends the slave trade.

Before the conclusion of the session important debates took place on two measures, which the Government very cordially and creditably supported, and both of these were opposed by the Chancellor. Resolutions came up from the Commons for the abolition of the slave trade, and Lord Grenville having contended "that, for the sake of preserving the national character from disgrace, it ought to be abolished, not only as a traffic founded on inhumanity and injustice, but a traffic unnecessary and impolitic," Lord Thurlow said, "As to the iniquity and atrocity which had been so largely imputed to the slave trade, he could not understand why its criminality had not been discovered by our ancestors, and should become so conspicuous in the year 1792." Then, forgetting his former contempt for colonial legislation, which he had testified during the contest with America, he suggested that the importation of slaves from Africa into the West India islands was a subject of internal commercial regulation, which the planters themselves best understood, and which should be left to their decision. This being considered an open question,—on the division which took place, he carried a majority of 63 to 36 against the Government.*

He unsuccessfully opposes Fox's Libel Bill.

But, luckily, he failed in his dying effort as Chancellor, again to defeat the bill to ascertain the rights of juries on trials for libel, and to protect the liberty of the press. He first contrived to get it postponed till near the end of the session; in every stage he inveighed violently against it; he obtained a declaration of opinion from the Judges, that "libel, or no libel?" was a pure question of law for the Court; and, thoroughly beaten by Lord Camden, he proposed a clause which would have rendered the bill nugatory, and to which he pretended that the venerable patriot could not object,—when he received a memorable answer, which seems actually to have made him ashamed, as he offered no farther opposition to the bill. However, when it had passed, he embodied his objections to it in a strong protest, which remains as a monument of his illiberality and his obstinacy.†

His protest against it, June 12.

* 29 Parl. Hist. 1341—1355.

† Ante, p. 349.

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Three days after this protest was signed, he ceased to be Chancellor. The 15th of June, 1792, must have been a sad day for the haughty spirit of Thurlow.

Last day of the session. Thurlow's last day in office.

Now came the prorogation, the event to which his dismissal was respited. The King being placed on the throne, and the Commons attending at the bar of the House of Lords, the Speaker, in his address, before presenting the Supply Bill for the royal assent, eulogised in warm terms the measures of the Session — particularly that for establishing a sinking fund to pay off the national debt, and that for ascertaining the rights of juries and protecting the liberty of the press.

His mortification in hearing the Speaker and the King praise the measures he had opposed.

Nay, in the very speech which the King himself delivered from the throne, and which Thurlow, on bended knees, put into the King's hand, his Majesty was made to say, "I have observed, with the utmost satisfaction, that you have made provision for the reduction of the present national debt, and established a permanent system for preventing the dangerous accumulation of debt in future," — although it was the scheme which the "keeper of the royal conscience" had so violently opposed, and for opposing which he had received notice to quit his office. The last time he ever spoke in public as Chancellor was in proroguing the Parliament, by his Majesty's command, till the 30th day of August then next.*

He surrenders the Great Seal, June 15 1792.

As soon as this ceremony had been performed, he drove to St. James's Palace, where a council was held, and he surrendered the Great Seal to his Majesty, — having the mortification to see Sir James Eyre, Chief Baron of the Exchequer, Sir William Ashurst, a Judge of the King's Bench, and Sir John Wilson, a Judge of the Common Pleas, in attendance to receive it as Lords Commissioners. Resignation of office into the hands of the Sovereign by a ministry retiring in a body, though not a joyous scene, is attended with some consolations. They probably feel, in common, that they have fought a good fight; they know that the same fate has overtaken all; and their misfortune is not only softened by mutual sympathy, but by the prospect of going together into opposition, and of returning together into place. Poor

* 29 Parl. Hist. 1555.

Thurlow was now a solitary outcast; he had brought his disgrace upon himself by his own waywardness and intemperance; he had no question to agitate before the public; he had no political party to associate with; he had lost the pleasures of office, without the excitement of opposition; and hope even was gone, for there was no conceivable turn of parties that could ever again bring power within his reach. When he drove him from St. James's to Great Ormond Street without the Great Seal, which had been his beloved companion so many years, he must have been a good deal dejected. — The only boon bestowed upon him was a remainder of his peerage to the sons of his two brothers *,—and no ray of kingly favour ever after shone upon him for the rest of his days.

His desolate condition.

He soon comported himself, however, with apparent firmness, and he showed a friendly and generous disposition by the advice he now gave to Sir John Scott, the Attorney General, who having been advanced by him, wished to share his fall. "Stick by Pitt," said the retiring Chancellor: "he has tripped up my heels, and I would have tripped up his if I could. I confess I never thought the King would have parted with me so easily. My course is run, and for the future I shall remain neutral. But you must on no account resign: I will not listen for a moment to such an idea. We should be looked on as a couple of fools! Your promotion is certain, and it shall not be baulked by any such whimsical proceeding." It is creditable to both, that in the party vicissitudes which followed, their intimacy and cordiality remained unabated.

His advice to Sir John Scott.

* On the 12th of June, 1792, he was created Baron Thurlow of Thurlow, in the county of Suffolk, with remainder, on failure of his own heirs male, to the heirs male of his brother the Bishop, and John Thurlow, Esq.

# CHAPTER CLXI.

## CONCLUSION OF THE LIFE OF LORD THURLOW.

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What was in Thurlow's power after his loss of office.

Our Ex-chancellor was at this time only sixty years of age, with an unbroken constitution. Considering his abilities and reputation, he might, as an independent member of the legislature, have had great weight, and he might have continued to fill a considerable space in the public eye — being of some service to his country, and laying the foundation of some additional claim to the respect of posterity. But with his office he seemed to have lost all his energy. When he again entered the House of Lords, he was like a dethroned sovereign, and he could not bear his diminished consequence.

His inadequate performance.

Seen without his robes, without his great wig, sitting obscurely on a back bench instead of frowning over the assembly from the woolsack, — the Peers were astonished to discover that he was an ordinary mortal, and were inclined to revenge themselves for his former arrogance by treating him with neglect. Finding his altered position so painful, he rarely took any part in the business of the House, and he might almost be considered as having retired from public life. He had a very favourable opportunity of improving our institutions and correcting the abuses in the law, which he had observed in his long experience, but he would as soon have thought of bringing in bills to alter the planetary system, or to soften the severity of the climate; for he either thought what was established perfect, or that the evils experienced in the administration of justice were necessary, and ought to be borne without murmuring. Almost the only subject which excited him was the attempt to abolish the slave trade, — "a dangerous sentimentality," which he continued to resist and to reprobate.

His habits in retirement.

He now spent the greatest part of his time at a villa he had purchased near Dulwich. The taste which, in early life, he had contracted for classical literature, proved during

some months a resource to him. But reading without any definite object, he found tiresome, and he is said to have suffered much from the *tedium vitæ*. His principal relief was in getting young lawyers to come to him in the evening to tell him what had been going on in the Court of Chancery in the morning; and he was in the habit of censuring very freely the decisions of his successors.*

For about two years he pretty regularly attended the hearing of appeals and writs of error in the House of Lords, but at the end of that period he refused to come any longer. Having no pension or retired allowance, he did not consider that the public had any claim upon his time†; he could not well endure to appear as a subordinate where he had so long dictated; and as there was no reasonable prospect of his return to office, he was indifferent about keeping up his law by acting as a Judge. In January, 1793, his mortification was increased by seeing the Great Seal in the possession of his rival Wedderburn, on the secession of a large section of the Whig party from Mr. Fox—an event to which Thurlow's own retirement had materially contributed.

**His demeanour in the House of Lords.**

When he showed himself in the House, he was observed to look sulky and discontented. He was even at a loss where to seat himself, for he hated equally the government and the opposition, and there was no precedent for an Ex-chancellor placing himself on a cross bench. He took no part in the important debates which arose on the French revolution, or on the origin of the war with the French Republic. In the session of 1793 he contented himself with opposing a bill to increase the sum for which a debtor might be arrested from 10*l.* to 20*l.* ‡, and expressing an opinion that there is no appeal in criminal cases from the Courts in Scotland to the House of Lords. § In the beginning of the following year

* Mr. Leach, afterwards Sir John, and Master of the Rolls, was his chief reporter. It is curious that Mr. James Allan Park, afterwards a Judge, acted in the same capacity to Lord Mansfield when retired from the Court of King's Bench.

† Although there was then no parliamentary retired allowance for Ex-chancellors, they were better off than at present. Thurlow was a Teller of the Exchequer, and had given sinecures to all his relations, for one of which his nephew now receives a commutation of 9000*l.* a year.

‡ 30 Parl. Hist. 650. § Ib. 928.

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Jan. 1794.

he resisted the attempt that was made to obtain a reversal of the atrocious sentence of transportation passed by the Court of Justiciary, at Edinburgh, on Muir, for advocating parliamentary reform. *

Progress of Hastings's trial.

Out of office he continued a warm partisan of Mr. Hastings, although he could hardly have expected that the aged and vituperated Ex-Governor General could now be set up as a rival to Mr. Pitt.

May, 1794. Thurlow complains of a report of a committee of the House of Commons, drawn up by Burke, as a libel.

Thurlow's zeal in defeating the impeachment was heightened by his antipathy to Burke, with whom he continued from time to time to have "passages of arms." A committee of the House of Commons appointed to inquire into the causes of the length of the trial, having presented an elaborate Report drawn by the chief manager, which reflected with great severity upon the manner in which the Lords had conducted the proceedings, and particularly their practice of deciding all questions upon the admissibility of evidence according to the rules of the common law as declared by the Judges †, the Ex-chancellor loudly complained of it as a libel on the House of Lords, denominating it "a scurrilous pamphlet, published by one Debrett in Piccadilly,"—which had that day been put into his hands, reflecting highly upon the Judges and many members of that House. He said "it was indecent and disgraceful, and such as ought not to pass unpunished, as it vilified and misrepresented the conduct of judges and magistrates intrusted with the administration of criminal justice,—an offence of a very heinous nature,—tending with the ignorant and the wicked to lessen the respect due to the law itself."

Burke's revenge upon him.

We have a fuller account of Burke's retaliation next day in the House of Commons. After stating the attack made

* 20 Parl. Hist. 1302. 1304. The trials which took place in Scotland about that time cannot now be read without amazement and horror,—mixed with praises to Heaven that we live in better times. In the year 1834, being a candidate to represent the city of Edinburgh in parliament, I was reproached for not being sufficiently liberal in my opinions. I said truly, that although Attorney General to the Crown, I had uttered sentiments for which, forty years before, I should have been sent to Botany Bay. "The Martyrs' Monument," on the Calton Hill, erected to the memory of Muir and his companions, is a striking proof of the servitude of a former generation, and of the freedom of the present.

† 31 Parl. Hist. 288.

on "the pamphlet published by one Debrett in Piccadilly," he said,—"I think it impossible, combining all the circumstances, not to suppose that this speech does reflect upon a Report, which, by order of the Committee on which I served, I had the honour to present to this House. For any thing improper in that Report, I and the other members of the Committee are responsible to this House, and to this House only. I am of opinion with the eminent person by whom that Report is censured, that it is necessary at this time very particularly to preserve the authority of the Judges. But the Report does not accuse the Judges of ignorance or corruption. Whatever it says, it does not say calumniously. This kind of language belongs to those whose eloquence entitles them to a free use of epithets. It is necessary to preserve the respect due to the House of Lords; it is full as necessary to preserve the respect due to the House of Commons; upon which (whatever may be thought of us by some persons) the weight and force of all authorities within this kingdom essentially depend. The Report states grave cause of complaint to the prejudice of those whom we represent. Our positions we support by reason and precedent, and no sentiment which we have expressed am I disposed to retract or to soften. Whenever an occasion shall be regularly given for discussing the merits of the Report, I shall be ready in its defence to meet the proudest name for ability, learning, or reputation which this kingdom can send forth." *

Apr. 1795. Conclusion of Hastings's trial.

Thurlow remained quiet till the trial was at last to close, and the arraignment having taken place before one generation, the judgment was to be pronounced by another. One hundred and sixty Peers had walked in the procession the first day, and only twenty-nine voted on the question of *guilty or not guilty*. "The Great Seal was borne before Loughborough, who, when the trial commenced, was a fierce opponent of Mr. Pitt's government, while Thurlow, who presided in the Court when it first sat, estranged from his old allies, sat scowling among the junior Barons." †

Thurlow's speech in

But when the debates upon the merits began among the Lords themselves, in their own chamber, the Ex-chancellor's

* 31 Parl. Hist. 605—609. † Macaulay's Essays, iii. 456.

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favour of Hastings.

pugnacity returned in full vigour, and he valiantly assailed his successor, who formerly, and still, closely connected by party ties with Mr. Burke, contended that all the charges, except three, were fully established. Thurlow treated all these arguments with contempt, and insisted that even the charges on which six Peers said "*Guilty,*" were either entirely frivolous, or unsupported by a shred of evidence. He had, on this occasion, not only the majority of the House, but the voice of the public on his side, there having been, for some time, a strong re-action against the accusation; and he must have enjoyed a great triumph in being present while Lord Loughborough was compelled to announce the acquittal, and to behold the triumphant Hastings, still standing at the bar, overwhelmed with congratulations.*

Acquittal of Hastings.

Thurlow in opposition.

The vulgar, who do not penetrate the workings of the human heart, were astonished now to discover that Thurlow, who had been a furious Ultra-tory, was beginning to incline to the liberal side in politics. He was taken into favour by the Prince of Wales; he formed an intimacy with Lord Moira, a leader of the Carlton House party, and he was even disposed to cultivate the acquaintance of Mr. Fox. There is nothing so effectual to reconcile old political, and even personal, enmities as a common hatred of the Minister for the time being. "Idem sentire de rerum politicarum administro," is the foundation of English, as "idem sentire de republicâ" was of Roman, friendships. Low as the Whig party now was in point of numbers, from the dread of Jacobinism †,—Thurlow showed strong symptoms of a wish to coalesce with them. He assisted Lord Lauderdale in opposing the suspension of the *Habeas Corpus Act*, although, during the American war, he scorned all who had any scruple about such unconstitutional measures,— and he divided against the Government in a minority of 11 to 119.‡

* Trial of Warren Hastings, published by Debrett, 1797; Mills's History of India, vol. v. c. 2.

† I heard old George Byng say, at the dinner given to him to celebrate the 50th anniversary of his having sat for Middlesex, alluding to those times: "It has been asserted that the Whigs would all have been held in *one* hackney coach. This is a calumny; we should have filled *two!*"

‡ 31 Parl. Hist. 586.

Thurlow a partisan of the Prince of Wales.

To strengthen his connexion with Carlton House, when the bill was passing to grant the Prince an annuity on his inauspicious marriage, Thurlow expressed deep regret that a larger allowance was not proposed for his Royal Highness. He anticipated much good conduct both from the Prince and the Princess, and he prophesied "that, when the new order of things was observed, the generosity of the nation would be roused by the change, and they would readily come forward and relieve the Prince from the necessity of longer continuing in retirement and obscurity." The Duke of Clarence highly complimented the noble and learned Lord on the regard and attachment he had manifested for the Prince and the Royal Family.*

Thurlow again "a patriot."

Thurlow now became a "flaming patriot." We have arrived at a period of English history which, by exaggeration, has been called "the Reign of Terror," and upon which I shall often have to animadvert in writing the lives of Loughborough, Erskine, and Eldon. Under the apprehension of revolutionary principles,—without any intention of permanently encroaching upon the constitution, but with the hope of adding to the strength of the administration, by spreading alarm over the nation,—after the failure of the ill-advised trials, in which an attempt was made to take the lives of Mr. Horne Tooke, and others, for following the example lately set by the Prime Minister in struggling for parliamentary reform,—bills were brought in of a very stringent character—to restrain the holding of public meetings,—to extend the law of high treason,—and to subject persons found guilty of seditious libels to transportation beyond the seas.

Dec. 1795. He opposes the "Treason and Sedition Bills."

These having been strenuously resisted by Fox, Grey, and Erskine in the House of Commons — when they reached the House of Lords they found a bold opponent in Ex-chancellor Thurlow. He asked, "was it fitting that a man should be subject to such penalties for saying it was an abuse that twenty acres of land below Old Sarum Hill, without any inhabitants, should send two representatives to parliament?

* 32 Parl. Hist. 124—139.

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All were to be punished who attempted to create a dislike to the established constitution; and of the established constitution this renowned rotten borough is a part. He was decidedly of opinion that the old constitutional laws of the country were quite sufficient to put down offences against the state. New statutes and severe penalties he thought little calculated to attain the object proposed. A jury would be inclined to acquit a mischievous libeller rather than expose him to be transported seven years to Botany Bay. Cruel laws never conduced to the safety of a Prince or the preservation of an established government."* On another occasion he said, "he would have the existing law improved against libellous and seditious meetings, — which he had no doubt might thus be put an end to. The speeches quoted were insolent and impertinent, but were they so dangerous as to call for the proposed enactments? It was the glory of the English constitution that it imposed no previous restraint on the people in the exercise of the important privilege of meeting to discuss grievances and petition parliament for their redress. That privilege stood precisely on the same ground with the freedom of the press. Its use was free and unrestrained, but its abuse was open to punishment. Montesquieu, in his 'Spirit of Laws,' said that 'the existence of political freedom in England depends on the unrestrained right of printing.' If the people feel the pressure of grievances, and may not complain of them, we are slaves indeed. To declare, therefore, that 'the people have nothing to do with the laws but to obey them,' was as fallacious as it was odious.† There was no ground for saying, that if people met to discuss public questions, they meant to overcome the legislature; they might wish to awaken in the people a due attention to a subject involving their dearest and most invaluable rights. During the fervour of the Middlesex elec-

* 32 Parl. Hist. 255.

† Sentiment of the Bishop of Rochester, which we are told Thurlow violently reprobated when it was uttered, although this does not appear from the Parliamentary History. The Bishop was now allowed to explain the expression so as to render it unexceptionable.

tion, some had gone so far as to declare that no resolution or act of the House of Commons was of any validity while Mr. Wilkes was excluded. Subsequently other doctrines had been broached equally extravagant and alarming, but he had never heard that bills, such as the present, were necessary to restrain them. This bill about public meetings was likewise liable to the gravest objection from the wording of its clauses, and either betrayed great negligence in those who framed it, or afforded suspicion of its originating in an awkward motive. The bill gave magistrates the power of taking all persons into custody 'who should hold any discourse for the purpose of inciting or stirring up the people to hatred and contempt of the person of his Majesty, *or the government and constitution of this realm as by law established.*' If these words were allowed to stand in the bill, there was at once an end of all discussion with a view to parliamentary reform. The inequality between Yorkshire and Old Sarum — each returning its two members — could not be mentioned without derision and ridicule, — which an ignorant magistrate would construe into an incitement of the people to hatred and contempt of our representative system, and consequently of 'the government and constitution as by law established.' The worthy magistrate would dissolve the meeting, and take all present into custody. A prosecution might be brought for excess of authority, but the prosecutor would come into court with a rope about his neck. To such an extent did the bill go as to enact by one clause that 'if an assembly met for public discussion, should continue together peaceably to the number of twelve one hour after proclamation to depart, all present were guilty of felony,' and the magistrate was ordered to put them to death, or at least was saved harmless, if they lost their lives in resisting him. The bill was founded on what was called the growth of French principles in this kingdom. To produce such outrages as had disgraced France, nothing could more directly tend than violent measures like the present. He could not give his assent to a bill wantonly circumscribing that liberty which England had so long enjoyed, and under the auspicious in-

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fluence of which she had so long flourished." Upon a division, the minority mustered 18 against 107.*

Thurlow follows the example of the Whigs, and secedes from parliament.

Having failed in these endeavours, the Ex-chancellor followed the example of the Whig leaders, without forming any express coalition with them,—in seceding from parliament,—and during the two following sessions his name does not once occur in the parliamentary debates.

1796 and 1797. Projected new administration, with Thurlow as Chancellor.

However, in the autumn of 1797 there was suddenly a prospect (which, while it lasted, gave him great delight) of his being restored to his old office of Lord Chancellor. Mr. Pitt's administration had fallen into very considerable discredit from the conquests of the French Republic on the Continent, from the disturbed state of Ireland, from the mutiny in the fleet, and from the unexampled commercial embarrassment which had led to the suspension of cash payments at the Bank. But Mr. Fox, hated by the King, was at present by no means popular with the nation. In these circumstances, a project was set on foot under the auspices of the Prince of Wales, to form a new administration, from which Mr. Pitt and Mr. Fox should both be excluded, and of which the Earl of Moira was to be the head, with Thurlow as his Lord Chancellor, and Sir William Pulteney as his Chancellor of the Exchequer. The King, although never disheartened in the midst of difficulties, began to look at his minister with some distrust, and was not unfriendly to the change. But no confidence was placed in the sufficiency of the proposed new chief,—Mr. Sheridan absolutely refused to belong to an administration excluding Mr. Fox,—and the plan, without making more progress, proved abortive.†

Dec. 10. 1795. The plan proves abortive.

* 32 Parl. Hist. 505—556. The Earl of Malmesbury gives the following account of this debate in a letter to the Duke of York: "The debate in the House of Lords began at five, and did not end till a quarter past three. The speakers against the bill (and usually in opposition) were those your Royal Highness mentioned in your last letter. Lord Thurlow was artfully and cautiously factious; Lord Moira (I am very sorry to say) loudly and violently so; and I think I never heard a speech with so much unfair and unprovoked invective against ministers. It was evident to me, from the manner of these new partisans of the opposition, and from the part they had allotted to themselves on this occasion, that they have it in their expectations that the present ministry will not last; that Fox and his party will not be chosen to succeed them; and that *they* shall be the persons to fill their offices."—*Correspondence of Lord Malmesbury*, iii. 256.

† A rumour being spread that Mr. Sheridan had agreed to accept office

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Thurlow seeing the man whom he so much disliked again in the possession of undisputed power, not only abstained from taking part in the debates of the House of Lords, but ceased to feel any interest whatever in politics, and declared that he had finally abandoned parliamentary strife. He never went to the King's court, but he kept up an intercourse of civility with Carlton House. On rare occasions he showed himself among the Peers, and expressed an opinion on subjects not connected with faction. In the year 1798, he delivered a very sensible and dispassionate speech against a bill for increasing the assessed taxes,—not, in his old style, declaring "its principle to be iniquitous, and its clauses nonsensical and contradictory," but calmly examining the different ways and proportions in which individuals should be made to contribute to the necessities of the State—so as to lead to the conclusion that he had been devoting a portion of his leisure to the study of finance and political economy.*

Thurlow abandons public life.

July 5. 1799. He maintains the *equality* of all *Peers*.

The following year he interposed with great effect to support the equality and dignity of the peerage — advantageously reminding those who heard him of his lofty stand against the Duke of Richmond, soon after his first entrance into the House. The Duke of Clarence (afterwards William IV.) having delivered a long speech against the abolition of the Slave trade, Lord Grenville rising after him, said, "between him and his Royal Highness there could be no personal debate, because between them there was no equality." Lord Romney having spoken to order, and Lord Grenville having repeated his words, Lord Thurlow rolled out these sentences with all his ancient energy, graced with a suavity which was new to him: "I wish it to be clearly understood 'whether it is the constitution of this House that we are unequal in our right to speak here?' I am one of the lowest in point of rank. I contend not for superiority of talent or for any pretension whatever above any of your

under this projected administration, Lord Moira wrote a letter, which was published in the newspapers, to contradict it. See Moore's Life of Sheridan, ii. 273. 302.

* 33 Parl. Hist. 1290.

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Lordships. But, my Lords, I claim to be exactly equal not only to the illustrious personage who has just spoken, but to the Prince of Wales himself, if he were present in this House, as a Peer of parliament. I know of no difference between Peers of Parliament, considered in their parliamentary character, and I maintain that the lowest, in point of precedence, while we are debating here, is equal to the highest. If rank or talent created an inequality in our right to speak in this House, the illustrious Prince who has lately addressed you, would have a far higher right to be heard than I pretend to; but in speaking my sentiments to your Lordships, I claim for my humble self a perfect equality with every Prince of the blood, and with those of the highest intellectual position in this assembly." He afterwards closed the debate by a violent attack on the bill, unnecessarily ridiculing what a Bishop had said, who had tried to prove the morality of the Africans, by "their women wearing petticoats," — an article of dress which another Right Reverend Prelate asserted had been laid aside by the opera dancers.

His defence of slavery.

Thurlow then went on boldly to maintain "that there was no prohibition against slavery in the Christian religion, and that as we did not pretend to destroy the *status*, there was no propriety in putting down the ancient commerce by which slaves were to be supplied where they were wanted. The bill was altogether miserable, and contemptible. A Society had sprung up to civilise the Africans; that is to say, they would send a missionary to preach in a barn at Sierra Leone to a set of negroes who did not understand one word of his language." — However, we ought never to despair of truth gradually and finally prevailing among any set of men, however prejudiced: the Lords were improving, and there being now an equality of votes on each side (36 to 36), the bill was only lost by the maxim of this House, "*semper presumitur pro negante*" — which sometimes makes their decisions depend upon the manner in which the question is worded. *

* 34 Parl. Hist. 1092—1141. As every Peer votes upon a division, and no one has a casting vote, some rule becomes necessary to govern the decision in case of an equality of voters. The one adopted is supposed to stop any proceeding not sanctioned by a majority.

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Lord Thurlow did not again appear in public till the 20th of May, 1801, the occasion on which I myself saw and heard him, and of which I have imperfectly attempted to give some account at the commencement of this Memoir.*

His appearance in the House of Lords in 1801.

He had then the consolation of seeing Mr. Pitt obliged to retire into a private station, and the woolsack occupied by one much less obnoxious to him than his ancient rival: Mr. Addington was Prime Minister, and Lord Eldon was Chancellor. Thurlow's spirits so far rallied, that he spoke several times with animation and efficiency. He opposed a bill to indemnify the late administration for what they had done during the suspension of the *Habeas Corpus* Act. He said, "instead of *a bill of indemnity*, it ought to be entitled *a bill to suppress actions for personal injuries.* He could not see on what ground of policy a man should be imprisoned for eight years without being brought to trial. It was impossible for him to withhold his compassion from persons lingering in prison for a series of years, who had again and again waited investigation of their conduct; nor could he resist the inclination to deem such men innocent until tried and convicted."†

His delight upon the resignation of Pitt.

He opposes the bill for indemnifying the late ministers.

His next effort was in favour of an old enemy whom, when Attorney General, he had prosecuted and sent to gaol, and struggled to place in the pillory, but with whom he was now living on terms of great personal intimacy.

He opposes the bill to prevent Horne Tooke from sitting in the House of Commons.

The following extract from the Diary of a distinguished political character, some years deceased, gives an interesting account of their first meeting after the convicted parson had been marched off to Newgate:—

"Lady Oxford who then (1801) had a house at Ealing, had by Lord Thurlow's desire (I believe), but at all events with his acquiescence, invited Horne Tooke to dinner to meet him. Lord Thurlow never having seen him since he had prosecuted him when Attorney General for a libel in 1778, and when the greatest bitterness was shown on both sides—so that this dinner was a meeting of great curiosity to us who were invited to it. Sheridan and Mrs. Sheridan were

Account of the formation of his intimacy with Horne Tooke.

* Ante, p. 473. † 35 Parl. Hist. 1539.

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there, the late Lord Camelford, Sir Francis Burdett, Charles Warren, with several others, and myself. — Tooke evidently came forward for a display, and as I had met him repeatedly, and considered his powers of conversation as surpassing those of any person I had ever seen (in point of skill and dexterity, and if at all necessary in *lying*), so I took for granted old grumbling Thurlow would be obliged to lower his top-sail to him — but it seemed as if the very *look* and *voice* of Thurlow scared him out of his senses from the first moment — and certainly nothing could be much more formidable. So Tooke tried to recruit himself by wine, and, though not generally a drinker, was very drunk: but all would not do; he was perpetually trying to distinguish himself, and Thurlow as constantly laughing at him."

Thurlow's visits to Horne Tooke at Wimbledon.

Horne Tooke, after he had escaped the greater peril to which he had been exposed by another Attorney General of being hanged, beheaded, and quartered as a traitor, had taken up his abode at Wimbledon, and thither Thurlow used to ride from Dulwich, that he might pass a morning with him in talking over the trial of *Rex* v. *Horne* before Lord Mansfield, and in discussing some of the questions started in the Επεα πτεροεντα.* The Ex-chancellor would likewise occasionally dine with the ex-parson, and mix with good humour in the motley company there assembled,—Hardy, the shoemaker, sitting on one side of him, and Sir Francis Burdett on the other.

Horne Tooke, though unsuccessful as a candidate against Mr. Fox at Westminster, had recently been returned to parliament for Old Sarum by Lord Camelford; and a question having arisen whether, as a priest in orders, he was disqualified to sit in the House of Commons, a bill passed that House to *declare* and enact that in all future parliaments, no person who had been ordained a priest should be allowed to serve as a representative of the people. When this bill stood for

* I have been informed by my late valued friend, Mr. Philip Courtenay, who, when a boy, used to be much with Horne Tooke at Wimbledon, that two or three years after this a new edition of the "Diversions of Purley" passing through the press, Thurlow asked and obtained a sight of the proof sheets — saying, "he was afraid he should not live till the book was published."

Thurlow's speech upon clergymen being excluded from the House of Commons.

second reading in the House of Lords, Lord Thurlow violently opposed it. He began with the doctrine he had been used to propound in Wilkes's case, respecting the Middlesex election, expressing his astonishment "that the Commons, who indubitably were the only judges of the question of '*who ought to sit in their House*,' should, on this occasion, voluntarily consent to forego the exercise of functions peculiarly their own, and send up a bill to their Lordships upon the subject of eligibility to a seat among them, — calling thereby upon another branch of the legislature to regulate their rights and privileges." He then expressed a desire to know who could be the author of such a bill, and took an opportunity of showing unabated ill-will to Mr. Pitt, by an invidious eulogy on his successor. "At the head of the government," he said, "was now placed a man of great respectability, of known integrity, of unassuming manners, *not seeking to engross all the power of the state into his own hands*,—who had discharged the arduous duties of his office much to his own credit, and to the entire satisfaction of the public; it was impossible that such a man should be so prodigal of his reputation as to propose such an absurd measure. The eligibility of a priest who had been ordained should be decided by a committee under the Grenville act. Where was the propriety of introducing a bill to *declare* that a particular class of persons are ineligible by the common law to sit in parliament? It seemed very hard that a person once ordained, who, from conscientious motives, ceased to exercise any clerical function, should be told that he must not enter any other profession, because his priestly character was indelible. But why should this indelible character disqualify a priest to sit in the one House more than in the other? The right reverend bench opposite were very short-sighted if they supported this bill, for it would speedily lead to the revival of the act for their expulsion from parliament." He concluded by expressing his high value for the franchise of being eligible to represent the people in the legislature, which he considered as wantonly violated by this bill. However, he met with no support,—the present Lord Chancellor, the late Lord Chancellor, become Earl of Rosslyn,

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and the Bishop of Rochester standing up for the indelibility of orders, and considering this to be a permanent disqualification to represent the people in parliament;—so that he did not venture on a division, and he allowed the bill to pass without further opposition.*

May 4. 1802. Thurlow's last speech in parliament on the Peace of Amiens.

Lord Thurlow's last recorded appearance in the House of Lords was in the debate on the peace of Amiens, when still displaying his love for Addington, or rather his unappeasable enmity to Pitt,—in answer to Lord Grenville, who had complained that former treaties with France had not been renewed, he said "that all subsisting treaties being at an end by hostilities, *the abrogation of these treaties was to be imputed to the government, which had plunged the country into the war*, and that the revival of treaties depended on the will of the contracting parties." This defence, however, was disclaimed by Lord Chancellor Eldon, who denied the position that all former treaties not expressly renewed were to be considered abrogated, and declared that if the consequence of the omission were such as had been supposed, an address should be voted to his Majesty to dismiss his present Ministers from his councils for ever.†

His final retreat into private life.

Disgusted by such a repudiation of his help, or conscious of decaying powers, and seeing his influence for ever lost, he bade an eternal adieu to the assembly of which he had for many years been the most conspicuous member, and in which he found himself reduced to insignificance. He now permanently retreated into private life, spending his time at his villa, with occasional excursions to Brighthelmstone, to Bognor, to Scarborough and to Bath.

He is consulted respecting the charges against the Princess of Wales.

Although no longer taking any share in parliamentary or party warfare, he continued to be consulted, till within a few months of his death, respecting the unhappy differences which prevailed in the Royal Family. On occasion of the first communication of the charges made by Lady Douglas against

* 35 Parl. Hist. 1541.

† 36 Parl. Hist. 596. The distinction is between treaties which, from their nature, are meant to be permanent and perpetual, such as for cession, boundary or exchange of territory; and such as from their nature are extinguished by hostilities, such as for commercial intercourse. See Vattel, b. xi. c. xii. § 153.; Martens, § 58.; Wheaton, part iii. c. xi.; Kent's Commentaries, i. 177.; *Sutton* v. *Sutton*, 1 Russell & Mylne, p. 663.

Caroline, Princess of Wales, the Prince directed that Lord Thurlow's opinion should be taken as to the course to be followed on a matter of such delicacy, and in the Diary of Sir Samuel Romilly we have the following interesting statement of the interviews which then took place between him and the Ex-chancellor. Having mentioned that Colonel M'Mahon brought him Lady Douglas's "Narrative," he thus proceeds:—"After I had read it, by the desire of the Prince I called on Lord Thurlow. Colonel M'Mahon accompanied me. Lord Thurlow had been very ill, which had been the cause of our interview being postponed for a week. He was still indisposed, and appeared to be extremely infirm; he was, however, in full possession of his faculties, and expressed himself, in the conversation we had together, with that coarse energy for which he has long been remarkable. He said that he had not been able to read all Lady Douglas's narrative, it was written in so bad a hand, but that he had gone rapidly over it, and collected the principal facts (and in truth it appeared, from the observations he made, that no fact of any importance had escaped him); that the first point to be considered was, whether her account were true, and that for himself he did not believe it. He said, that there was no *composition* in her narrative (that was the expression he used),—no connexion in it—no dates; that some parts of it were grossly improbable. He then said, that when first he knew the Princess he should have thought her incapable of writing or saying any such things as Lady Douglas imputed to her, but that she might be altered; that, to be sure, it was a strange thing to take a beggar's child, but a few days old, and adopt it as her own; but, however, Princesses had sometimes strange whims, which nobody could account for; that, in some respects, her situation was deserving of great compassion. Upon the whole, his opinion was, that the evidence the Prince was in possession of would not justify taking any step on his part, and that he had only to wait and see what facts might come to light in future. In the mean time, however, that it would be proper to employ a person to collect evidence respecting the conduct of the Princess." *

Dec. 15. 1805. Extract from Sir S. Romilly's Diary on this subject.

* Mem. of Sir S. Romilly, ii. 125.

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No other meeting with Thurlow took place, and the "Delicate Investigation" proceeded — the misconduct of both the illustrious parties continuing to scandalise the nation long after he had left this world.

Creevery's account of Thurlow at Brighthelmstone.

Brighthelmstone was now his favourite retreat. The Diary I have before quoted for an account of his reconciliation with Horne Tooke, gives a lively representation of the life he led there in his declining days: — "Another very curious person whom I saw a great deal of in the autumn of 1805, sometimes at the Pavilion, sometimes at other houses where the Prince dined, and repeatedly at his own house, was Lord Thurlow, to whom the Prince always behaved with the most marked attention and deference.

"Thurlow had declined greatly in energy from his encounter with Horne Tooke at Lady Oxford's. He used to read, and ride out in the morning, and his daughter (Mrs. Brown) and Mr. Sneyd the clergyman were both always occupied in procuring any strangers, or any other persons who they thought would be agreeable to the old man, to dine with him — the party being thus ten or twelve every day, or more. — I had the good fortune to be occasionally there with my wife, which was a civility we owed to some former attentions from her to one of his daughters in the county of Durham, and however rough he might be with men, he was the politest person in the world to ladies. These two or three hours of his at dinner were occupied in lying in wait for any unfortunate slip or ridiculous observation that might be made by any of his *male* visitors, and whom, when caught, he never left hold of, till I have seen the sweat run down their faces from the scrape they had got into, and the unmerciful exposure he made of them. Having seen this property of his, I took care of course to keep clear of him, and have often been extremely amused in seeing the figure those have cut who came with the evident intention of *shewing off* before him. Curran, the Irish lawyer, I remember was a striking instance of this. I dined with him at Thurlow's one day, and he (Thurlow) just made as great a fool of him as he did formerly of Tooke.—He was always dressed in a full suit of clothes of the old fashion, great cuffs and massy buttons, great wig,

long ruffles, &c. His black eyebrows exceeded in size any I have ever seen, and his voice, though by no means devoid of melody, was a kind of rolling murmuring thunder. He was a man of great reading, particularly classical, and was a very distinguished as well as most daring converser. I never heard of any one but Mr. Hare who had fairly beat him, and that this happened I know from persons who were present. Hare turned the laugh against him more than once at Carlton House and at Woburn.

"Sir Philip Francis, whom I knew intimately, and who certainly was a remarkably quick and clever man, was perpetually vowing vengeance against Thurlow, and always fixing his time (during this autumn of 1805) for making 'an example of the old ruffian,' as he called him, either at the pavilion, or wherever he met him; but I have seen them meet afterwards, and though Thurlow was always ready for battle, Francis, who on all other occasions was as bold as a lion, would never stir. The grudge he owed to Thurlow was certainly not slightly grounded. When Francis, and General Clavering, and Monson, were sent to India in 1773, to check Hastings in his career, their conduct by one party in parliament was extolled to the skies, whilst, on the other hand, Lord Thurlow in the House of Lords said, 'the greatest misfortune to India and to England was, that the ship which carried these three gentlemen out had not gone to the bottom of the sea in her passage.'

"Lord Thurlow was induced to dine with George Johnstone, who being the most ridiculous toady of great men, and aspirer to what he thought genteel manners, said to him, 'I am afraid, my Lord, the port wine is not as good as I could wish,' upon which Thurlow growled out, 'I have *tasted better*.'

"On one occasion one of the caterers of company for Lord Thurlow's amusement thought he had secured a great card, when he took Sir —— ——, an F. R. S., a solemn conceited pedant of great pretension on very moderate foundation, to call upon him. In mentioning the circumstance afterwards, Lord Thurlow merely observed, '*A gentleman* did me the honour to call upon me to-day, *indeed, I believe he was a knight!*'

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"He was fond of good music, and was I believe a critic in it. When he came into the drawing-room after dinner, he generally put his legs up on a sofa, and one of his daughters played on the piano forte some of Handel's music, and though he might sometimes appear to be dozing, if she played carelessly, or music he did not like, he immediately roused himself, and said 'What are you doing?'

"As a proof of the 'attention and deference' above mentioned always paid to Lord Thurlow by the Prince, I may add that one day when Thurlow was engaged to dine at the Pavilion during the race week, Sir John Ladd arrived at Brighton, and the Prince invited him to dinner. The Prince was in the room before Thurlow arrived, and mentioned to one of the party his fear that Thurlow would not like the company, and when 'the old Lion' arrived the Prince went in to the anteroom to meet him, and apologised for the party being larger than he had intended, but added, 'that Sir John Ladd was an old friend of his, and he could not avoid asking him to dinner;' to which Thurlow, in his growling voice, answered, 'I have no objection, Sir, to Sir John Ladd in his proper place, which I take to be your Royal Highness's coach-box and not your table.'

"One day at dinner at his own house, he heard one of the company use the word 'chromatic,' as he thought affectedly. 'What does he say?' growled out Thurlow, and made his poor victim attempt to explain his meaning in a manner that probably cured him of using the word for the rest of his life. He was very particular about the dessert, and on one occasion when I was present, a dish of peaches being brought to him which he found great fault with,— he had the whole dessert, which, *for Brighthelmstone*, was a fine one, thrown out of the window!"

Jerningham's account of Thurlow at Brighthelmstone.

Again, we have the Ex-chancellor, in the autumn of the following year, when he was very near his end, presented to us in a very striking manner by Mr. Jerningham, the brother of Lord Stafford.

Sept. 1806.

"We afterwards dined at ——— to meet Lord Thurlow, and his daughter Mrs. Brown. A large party were assembled there. I was never more struck with the appear-

ance of any one than with that of Lord Thurlow. Upon entering the drawing-room, where he was seated on a sofa, we were all involuntarily moved to silence, and there was a stillness which the fall of a pin would have disturbed. He did not move when we came into the room, but slightly inclined his head, which had before hung down on his breast. He was dressed in an old-fashioned grey suit buttoned very loosely about him, and hanging down very low; he had on a brown wig with three rows of curls hanging partly over his shoulders. He was very grave and spoke little. His voice is rough, and his manner of speaking slow. Lord Thurlow is, I believe, only seventy-five; but from his appearance I should have thought him a hundred years old. His large black heavy eyes, which he fixes at intervals upon you, are overshadowed with perfectly white eyebrows, and his complexion is pallid and cadaverous. Upon literary subjects he ordinarily converses with much seeming pleasure, but having been this morning to the races he was fatigued and said very little. At dinner he drank a good deal, but nothing afterwards. In the course of conversation Mr. Mellish being remarked as a great favourite of the populace, Lord Thurlow said, 'They like him as a brother blackguard;' and then added, 'I am of their opinion: I dislike your pious heroes: I prefer Achilles to Hector, Turnus to Æneas.' Lord Thurlow has a surprising memory, and will not allow the want of it in any one else; but says it is want of attention, and not of memory, that occasions forgetfulness. Being asked how long it was since he had been in Norfolk, he replied, 'About fifty or sixty years ago.' He went home very early, calling loudly for his hat, which I remarked as being of black straw, with a very low crown, and the largest rim I ever saw. It is easy to see that in his observing mind the most trifling incidents remain graven. Thus upon Lady J. being asked a second time at the end of dinner whether she would have any wine, Lord Thurlow immediately exclaimed in a gruff voice, 'Lady J. drinks no wine!'

"We went to-day to dine at Lord Thurlow's, and upon being summoned from the drawing-room to dinner, we found him already seated at the head of his table in the same

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costume as the day before, and looking equally grave and ill. Lord Bute being mentioned, and some one observing that his life was going to be written, Lord Thurlow sharply observed, 'The life of a fly would be as interesting.'" *

A.D. 1806. The year 1806 fatal to great men.

Thurlow's career in this world was now near its close. The year 1806 was remarkable for the death of several of the greatest men England ever produced. In January the proud spirit of William Pitt, unable longer to witness the utter discomfiture of his foreign policy, and the triumph of his country's foes, had fled to another state of existence; and his illustrious rival and successor had scarcely begun to exercise the functions of the high office, which, after such struggles, he had attained, when he too was summoned away while forming plans for the glory of England and for the liberties of mankind.

Death of Pitt and Fox.

A few hours before the demise of Charles James Fox, — an event which, from the important part he was then performing, excited universal interest and general sympathy †, — Thurlow, who had formerly filled so large a space in the public eye, breathed his last — almost unobserved and unpitied. Soon after the dinners just referred to, while he still remained at Brighthelmstone, he was suddenly seized with an attack of illness, which carried him off in two days. I have not learned any particulars of his end, but I will hope that it was a good one. I trust that, conscious of the approaching change, having sincerely repented of his violence of temper, of the errors into which he had been led by worldly ambition, and of the irregularities of his private life, he had seen the worthlessness of the objects by which he had been allured; that having gained the frame of mind which his awful situation required, he received the consolations of religion; and that, in charity with mankind, he tenderly bade a long and last adieu to the relations and friends who sur-

Death of Thurlow.

* Law Magazine, vol. vii. 90., "Life of Lord Thurlow," to which the public is first indebted for this interesting account.

† Even Walter Scott, a bitter political opponent, after a beautiful tribute to the services of Pitt, exclaimed:

"Nor yet suppress the generous sigh
Because his rival slumbers nigh."

rounded him.—He expired on the 12th of September, 1806, in the seventy-sixth year of his age.

A. D. 1806.

Sensation produced by his death.

Although the news of this event cannot be said to have produced any deep sensation in the public mind, the few survivors who had lived with Thurlow on terms of intimacy spoke and thought of him with respect and tenderness. I have pleasure in recording, to the honour of the Prince of Wales, that he immediately sent for a nephew of the deceased, then a very young man,—kindly made him an offer of assistance in any profession he might choose,—spoke of his uncle as one whom he sincerely loved,—a faithful friend and upright councillor;—and, lamenting his loss, was so much moved that he could not refrain from tears.

His funeral.

The Ex-chancellor's remains being sent privately to his house in Great George Street, Westminster, were conveyed thence, with great funeral pomp, to the Temple Church, Lord Chancellor Eldon, the Chiefs of the three superior Courts, and other legal dignitaries and distinguished men attending as mourners,—followed by almost the whole profession of the law.

Being still only a student at Lincoln's Inn, I did not witness the solemnity; but I well remember being told, by those who were present, of its grandeur and impressiveness. The coffin, with the name, age, and dignities of the deceased inscribed upon it, and ornamented with heraldic devices, was deposited in the vault under the south aisle of this noble structure, which still proves to us the taste as well as the wealth of the Knights Templars.*

Character of Sir William Follett.

* Here I saw Thurlow reposing, when, nearly forty years after, at the conclusion of funeral rites as grand and far more affecting, I assisted to deposit the body of my departed friend, Sir William Follett, by his side.[1]—May I be allowed to pay a passing tribute of respect to the memory of this most eminent, amiable, and virtuous man?—If it had pleased Providence to prolong his days, he would have afforded a nobler subject for some future biographer than most of those whose career it has been my task to delineate. When he was prematurely cut off, the highest office of the law was within his reach; and I make no doubt that, by the great distinction he would have acquired as a judge, as a statesman, and as an orator, a deep interest would have been given to all the incidents of his past life, which they want with the vulgar herd of mankind, because he never sat on the bench, nor had titles of nobility conferred upon him. One

[1] Sir R. Peel, the Prime Minister, Lord Lyndhurst, the Chancellor, and many distinguished persons on both sides in politics were present.

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In the choir was soon after placed his bust in marble, with the following inscription by the Reverend Martin Routh, D. D., President of Magdalen College, Oxford:

His epitaph.

"Baro Thurlow a Thurlow,
Summus Regni Cancellarius,
Hic sepultus est.
Vixit Annis LXXV. Mensibus X.
Decessit anno Salutis Humanæ MDCCCVI.
Idibus Septembris.
Vir altâ mente et magnâ præditus,
Qui
Nactus præclarissimas occasiones
Optimè de patriâ merendo,
Jura Ecclesiæ, Regis, Civium,
In periculum vocata
Firmo et constanti animo
Tutatus est."

This unqualified praise may be excused in an epitaph; but the biographer, in estimating the character and the conduct of the individual so extolled, is bound to notice his weaknesses, and to warn others against the faults which he committed. Even as a Judge, the capacity in which he appears to most advantage,

His defects as a Judge.

most remarkable circumstance would have been told respecting his rise to be the most popular advocate of his day, to be Attorney General, and to be a powerful debater in the House of Commons — that it was wholly unaccompanied by envy. Those who have outstript their competitors have often a great drawback upon their satisfaction by observing the grudging and ill-will with which, by some, their success is beheld. Such were Follett's inoffensive manners and unquestioned superiority that all rejoiced at every step he attained — as all wept when he was snatched away from the still higher honours which seemed to be awaiting him. — It is said:

"Envy will merit as its shade pursue,
But, like a shadow, proves the substance true."
"Fame calls up calumny and spite,
Thus shadow owes its birth to light."

But *envy* may be conquered. I do not agree in the sentiment contained in Pope's letter to Addison: "I congratulate you upon having your share in that which all the great men and all the good men that ever lived have had their share of — envy and calumny. 'To be uncensured and to be obscure is the same thing;'" — nor in the aphorism of Mr. Burke: "Obloquy is a necessary ingredient in the composition of all true glory;" — nor in the Spanish proverb to be found in Lopez de Vega:

"Dixo undiscreto que era matrimonia
Polibio el de la embidia de la fama
Que se apartava solo con la muerta" —

thus translated by Lord Holland:

"Envy was Honour's wife, a wise man said,
Ne'er to be parted till the man was dead."

There is a superlative degree of excellence, which, like that of superior intelligences, men cease to envy, because they feel that to them it is unattainable.

although he was entirely free from personal corruption or undue influence, and uniformly desirous to decide fairly, he was not sufficiently patient in listening to counsel, and he did not take the requisite pains to extricate the facts or to comprehend nice legal distinctions in complicated cases which came before him. Without devoting much time out of court to the duties of his office, no Judge can satisfactorily discharge them, and Thurlow seems to have despised the notion of reading law to extend or keep up his stock of professional knowledge. Only on very rare occasions would he take the trouble in his library of examining the authorities cited at the bar, and he used to prepare himself for giving judgment in his way from Great Ormond Street to the Court of Chancery. "An old free speaking companion of his, well known at Lincoln's Inn, would say, 'I met the Great Law LION this morning going to Westminster and bowed to him, but he was so busy reading in the coach what his *provider* had supplied him with, that he took no notice of me.'" * He certainly had an excellent head for law, and with proper pains he might have rivalled the fame of Lord Nottingham and Lord Hardwicke; but he was contented with the character of a political Chancellor, and, so that he retained power, he was rather indifferent as to the opinion which might be formed of him by his contemporaries or by posterity.† He often treated the bar with great rudeness, and his demeanour to the other branch of the profession sometimes awakened recollections of Jeffreys. A solicitor once had to prove a death before him, and being told upon every statement he made, "Sir, that is no proof," at last exclaimed, much vexed, "My Lord, it is very hard that you will not believe me; I knew him well to his last hour; I saw him dead and in his coffin, my Lord. My Lord, he was my client." *Lord Chancellor.* "Good God, Sir! Why did you not tell me that before? I should

**His rudeness to the bar and to solicitors.**

* Cr. i. 80.

† Lord Eldon used to be fond of quoting Thurlow as a great lawyer; but this was partly from personal liking, Thurlow having patronised him at the bar, and was partly *in odium* of Lord Loughborough, whom he despised as a Judge, and of Lord Mansfield, whom he always wished to depreciate from the time when he bade adieu to the King's Bench, on the ground that only Westminster and Christchurch men were favoured there. — *Twiss's Life of Eldon.*

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not have doubted the fact one moment; for I think nothing can be so likely to kill a man as to have you for his attorney." *

His enmity to law reform.

As to legal reform, instead of imitating those who held the Great Seal in the time of the Commonwealth and soon after the Revolution, he not only originated no measures of improvement himself, but he violently and pertinaciously opposed those which were brought forward by others. Mr. Pitt, though thwarted by Thurlow, really seems to have had a desire to reform our jurisprudence as well as our commercial policy, till the breaking out of the French revolution,—when the terror of Jacobinism put an end to all improvement, and it was unwisely determined to try to cure disaffection by rendering the laws more arbitrary.

His conduct as a statesman.

Of statesmanship he several times declared with great candour and truth that he knew very little. Unless when he went into open opposition to the Minister under whom he held the Great Seal, he blindly adopted whatever measures were brought forward by the Government, supporting them much less by information and argument than by zeal and violence. Yet he seems to have been considered a very useful partisan—from the protection he could afford to his friends, and the terror he inspired into his enemies. He served Lord North with unwearying good faith, and I really do not think he can justly be accused of treachery to Lord Rockingham, as while in the cabinet with that nobleman, he avowedly led the opposition from the woolsack. His double-dealing during the King's illness has affixed a permanent blot upon his character; but his subsequent hostility to Mr. Pitt, though very intemperate and wrong-headed, cannot be denominated perfidious, as it was openly manifested in parliament, instead of working in secret intrigues. His career after he was deprived of office, must be allowed to have been obscure and inglorious — his late-born zeal for liberty appearing to have sprung from personal dislike of the minister — not from any altered view he had taken of the constitutional rights,—

* This jest, which was probably thought innocuous by the author of it, is said to have ruined the reputation and the business of the unfortunate victim.

and having died away with the chance of his own restoration to office.

His judicial patronage. His judicial patronage was upon the whole well exercised, notwithstanding his occasional indulgence in personal antipathies, as in the case of Pepper Arden, who, in spite of him, was made Master of the Rolls and Baron Alvanley, and whose judgments are now regarded with high respect.* When created Lord Chancellor, he would not remove any of the officers appointed by his predecessors, or any Commissioners of Bankrupt †, except one, who made an application to him to be continued through his mistress.‡ The public owed to him the services of Lord Kenyon, and other eminent Judges, and he first discovered, and put in the line of promotion, the greatest lawyer of our times — John Scott — afterwards the Earl of Eldon.

His ecclesiastical appointments. In his ecclesiastical appointments he is said to have been less scrupulous, and to have been chiefly influenced by personal favour or political convenience. Yet forming a high opinion of Horsley, merely, from accidentally reading his Letters to Priestley, he gave him a stall at Gloucester, saying that "those who supported the Church should be supported by it," and afterwards recommended him to the episcopal bench. When Patten, who dedicated to him a translation of Æschylus, had published his translations of Sophocles and Euripides, Thurlow procured for him a stall at Norwich, observing that "he did not like to promote him earlier for fear of making him indolent." He first put other eminent divines in the line of high promotion. § A.D. 1788.

* Thurlow's preference of Buller to Pepper Arden is thus referred to by Peter Pindar:

"And *bonâ fide*, not of rapture fuller,
Thurlow the Seal and royal conscience keeper
Sees his prime favourite, Mister Justice Buller,
High thron'd in Chancery, grieve the poor Sir Pepper."

† It had been usual for a new Lord Chancellor to have what was called "a scratch,"— sweeping away the greater part of the seventy, and substituting his own favourites.

‡ He thus imitated the conduct of Geoege II. with respect to Lady Suffolk.

§ Having received the copy of au Essay from a Yorkshire parson which pleased him, he thus wrote to him: "Sir,— I return many thanks for the Essay you have sent me. Give me leave, in my turn, to inquire after your situation, and how far that or your inclination attaches you to Leeds or Yorkshire. I am, Sir, your ob[t] serv[t], THURLOW." — I wish your answer in return of post."

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His kindness to a Curate.

On one occasion, a considerable living fell vacant in the Chancellor's gift, which was solicited by Queen Charlotte, and promised to her *protégé.* The curate who had served in the parish some years, hearing who was likely to succeed, modestly applied for the Chancellor's intercession, that on account of his large family he might be continued in the curacy. The expectant rector calling to return thanks, Thurlow introduced the case of the curate, which he represented with great strength and pathos; but the answer was, "I should be much pleased to oblige your Lordship, but unfortunately I have promised it to a friend." *Thurlow.* — "Sir, I cannot make this gentleman your curate, it is true; but I can make him the rector, and by G—d he shall have the living as he cannot have the curacy." He instantly called in his secretary, and ordered the presentation to be made out in favour of the curate, — who was inducted, and enjoyed the living many years.*

His oratory.

Of his oratory I have given the most favourable specimens I could select,—using the freedom sometimes to correct his inaccuracies of language; for even the printed reports justify Mr. Butler's remark, that "though Lord Thurlow spoke slowly and deliberately, yet his periods were strangely confused, and often ungrammatical."† It argues little for the discrimination and taste of those to whom they were addressed, that they were listened to with profound attention, and produced a deep effect, though chiefly made up of "sound and fury;" while Edmund Burke acquired the nickname of the "*Dinner-bell,*" by delivering the finest speeches for depth of thought and beauty of diction to be found in our parliamentary records.

Thurlow himself appears always to have had a great contempt for his audience in the House of Peers, and to have reckoned with daring confidence on their ignorance. Of this we have a striking instance in the Memoirs of Bishop Watson, who, having informed us that in a speech the Right Reverend

* This anecdote I have from a nephew of the Chancellor. How he settled the matter with the Queen I have not heard, but we may suppose that her Majesty highly approved of this *equitable decision.*

† Reminisc. i. 142.

Prelate made during the King's illness in 1788, respecting the "right" of the Prince of Wales to be Regent, he quoted a definition of "right" from GROTIUS, thus proceeds: "The Chancellor in his reply boldly asserted that he perfectly well remembered the passage I had quoted from Grotius, and that it solely respected *natural*, but was inapplicable to *civil* rights. Lord Loughborough, the first time I saw him after the debate, assured me that, before he went to sleep that night, he had looked into Grotius, and was astonished to find that the Chancellor, in contradicting me, had presumed on the ignorance of the House, and that my quotation was perfectly correct. What miserable shifts do great men submit to in supporting their parties!"*

Unscrupulous advantage taken by him of the ignorance of his audience.

We have the following very striking representation of his oratory from a skilful rhetorician: — "He rose slowly from his seat; he left the woolsack with deliberation; but he went not to the nearest place like ordinary Chancellors, the sons of mortal men; he drew back by a pace or two, and standing as it were askance, and partly behind the huge bale he had quitted for a season, he began to pour out, first in a growl, and then in a clear and louder roll, the matter which he had to deliver, and which, for the most part, consisted in some positive assertions, some personal vituperation, some sarcasms at classes, some sentences pronounced upon individuals, as if they were standing before him for judgment, some vague mysterious threats of things purposely not expressed, and abundant protestations of conscience and duty, in which they who keep the consciences of Kings are somewhat apt to indulge." †

Lord Brougham's description of his manner of speaking in the House of Lords.

Butler, who had often heard him, ascribes to him a finesse, which I should not have discovered from the printed reports of his speeches, — for his apparent ignorance I should judge wholly unaffected, and he seems to me always to aim direct blows against his adversary: "He would appear to be ignorant of the subject in debate, and with affected respect, but visible derision, to seek for information upon it, pointing out with a kind of dry solemn humour, contradictions and absurdities which he professed his own

Another description of him by Butler

* Life of Watson, 221.

† Lord Brougham's Characters, i. 94.

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inability to explain, and calling upon his adversaries for their explanation. It was a kind of masked battery, of the most searching questions and distressing observations; it often discomfited his adversary, and seldom failed to force him into a very embarrassing position of defence: it was the more effective, as, while he was playing it off, his Lordship showed he had command of much more formidable artillery."

Thurlow never an author.

Lord Thurlow does not figure in Horace Walpole's list of noble and royal authors — never, as far as I know, having taken the trouble even to publish a pamphlet or a speech. Although he knew nothing of political economy, or of any science*, he had made himself thoroughly acquainted with the classics, Latin and Greek. These studies were the delight of his old age. When living in retirement at Dulwich, he found some consolation for the loss of power and of political excitement, in superintending the classical education of his nephews, who lived under his roof, and to whom he was very tenderly attached. For their instruction and amusement he would sometimes himself attempt to translate into English verse favourite passages of the ancient authors they were reading. As a curious specimen of his poetical powers I am enabled to lay before the public the following translation of a chorus, from the Hippolytus of Euripides: †

His classical taste cultivated by him in retirement.

Translation by him from Euripides.

"Oh, could I those deep caverns reach,
Where me, a winged bird, among
The feather'd race
Some God might place!

* He is said to have been very fond of music, and to have understood the theory of it perfectly, although the soothing charm usually imputed to it does not seem to have operated upon him.

† The learned reader will recollect that the guilty love of Phædra for Hippolytus had been disclosed to him by the Nurse, and that the heroine, on account of the repulse she met with, had declared her determination to hang herself. — I subjoin the original Chorus:

'Ηλιβάτοις ὑπὸ κευθμῶσι γενοίμαν,
"Ινα με πτεροῦσσαν ὄρνιν
Θεὸς ἐν ποταναῖς ἀγέλῃσιν θείη.
'Αρθείην γὰρ ἐπὶ πόντιον κῦμα
Τᾶς 'Αδριηνας ἀκτᾶς,
'Ηριδανοῦθ' ὕδωρ.
"Ενθα πορφύρεον σταλάσσουσιν
Εἰς οἶδμα πατρὸς τριτάλαιναι
Κόραι, Φαέθοντος οἴκτῳ, δακρύων
Τὰς ἠλεκτροφαεῖς αὐγάς.
'Εσπερίδων δ' ἐπὶ μηλόσπορον ἀκτὰν

And rising could I soar along
The sea-wave of the Adrian beach!
And by the Po my pinions spread,
  Where, in their father's ruddy wave,
Their amber tears his daughters shed,
  Still weeping o'er a brother's grave!
Or to those gardens make my way,
  Where carol the Hesperian maids,
    And He, who rules
    The purple pools,
  The sailor's further course impedes,
The awful limits of the sky
Fixing, which Atlas there sustains!
  And Spring's ambrosial near the dome
Of Jove still water those rich plains,
  Whence to the Gods their blessings come.

I.

White-wing'd bark of Cretan wood,
  Which across the briny main,
Over the sea-raging flood,
  From her happy home our Queen
Convey'd, a most unhappy bride,
In ill-starr'd wedlock to be tied!

II.

Dire both omens; when her flight
  Left behind the Cretan land;
And when Athens came in sight,
  Where, on the Munychian strand,
They tie the hawser's twisted end,
And on the mainland straight descend.

---

'Ανύσαιμι τᾶν Αοιδᾶν,
Ἵν' ὁ ποντομέδων πορφυρέας λίμνης
Ναύταις οὐκ ἔθ' ὁδὸν νέμει, σεμνὸν
Τέρμονα κυρῶν ὀυρα-
νοῦ τὸν Ἄτλας ἔχει·
Κρῆναί τ' ἀμβροσίαι χέονται
Ζηνὸς μελάθρων παρὰ κοίταις,
Ἵν' ὀλβιόδωρος αὔξει ζαθέα
Χθὼν εὐδαιμονίαν θεοῖς.
Ὦ λευκόπτερε Κρησία
Πορθμὶς, ἃ διὰ πόντιον
Κῦμ' ἁλίκτυπον ἅλμας
'Επόρευσας ἐμὰν ἄνασσαν
'Ολβίων ἀπ' οἴκων
Κακονυμφοτάταν ὄνασιν.
Ἦ γὰρ ἀπ' ἀμφοτέρων,
Ἢ Κρησίας ἐκ γᾶς δύσορνις
Ἔπτατο κλεινὰς 'Αθήνας, Μου-
νυχίου δ' ἐπ' ἀκταῖς ἐκδήσατο
Πλεκτὰς πεισμάτων ἀρχὰς,
'Επ' ἀπείρου τε γᾶς ἔβασαν.
'Ανθ' ὧν οὐχ ὁσίων ἐρώ-
των δεινᾷ φρένας 'Αφροδί-
τας νοσῷ κατεκλάσθη.

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III.

For unhallow'd passion rent,
  Planted deep, her lab'ring breast,
Dire disease, which Venus sent.
  And, with sore misfortune prest,
The chord suspended from the dome
  Of her ill-fated bridal room.

IV.

Round her milk-white neck she'll tie,
  Dreading much the adverse frown
Of the Goddess — prizing high
  Her unspotted chaste renown —
And from her heart resolv'd to move,
This only way, the pain of Love."

His translation of the "Battle of the Frogs and the Mice."

There is likewise extant, in his handwriting, a translation of the whole of the BATPAXOMTOMAXIA, "or Battle of the Frogs and the Mice," the merit of which may be judged of by the following extract: —

Bladder-Cheek, his Ranish Majesty, having vauntingly begun the dialogue, —

"Him Crumb-Catch answer'd quick in vocal sounds,
'Why, friend, my birth demand, so known to men,
To Gods, and to the fowl who wing the sky?
My name is *Crumb-Catch*, and I am the son
Of Nibble-Biscuit, my great-hearted sire;
Lick-Mill's my mother, King Gnaw-Gammon's child.
She bore me in a hole, and brought me up
With figs, and nuts, and ev'ry sort of food.
But how make me thy friend, unlike in kind?
Thy living is in waters; but my food,
Whatever man is us'd to eat. The loaf
Thrice-kneaded, in the neat round basket kept,
Escapes not me, nor wafer, flat and long,
Mix'd with much sesame, nor bacon-slice,
Nor liver, cloth'd in jacket of white lard,
Nor cheese, fresh curdled from delicious milk,
Nor the good sweetmeats, which the wealthy love,
Nor what else cooks prepare to feast mankind,
Pressing their dishes with each kind of sauce.

. . . . .

But these two chief I fear in all the earth,
The hawk and cat, who work me heavy woe;
And doleful trap, where treach'rous Death resides.'

. . . . .

Bladder-Cheek, smiling to all this, replied:
'Upon the belly's fare thou vauntest high,

---

Χαλεπᾷ δ' ὑπέραντλος οὖσα
Συμφορᾷ, τεράμνων
Ἀπὸ νυμφιδίων κρεμαστὸν
Ἅψεται ἀμφὶ βρόχον
Λευκᾷ καθαρμόζουσα δέρᾳ,
Δαίμονα στυγνὸν καταιδεσθεῖ-
σα, τάν τ' εὔδοξον ἀνθαιρουμένα
Φάμαν, ἀπαλλάσσουσά
Τ' ἀλγεινὸν φρενῶν ἔρωτα. Eur. Hip. 732.

My guest! We, too, have wonders to behold,
Numberless, both by water and by sod;
For to the frogs the son of Saturn gave
A lot amphibious, to leap on earth,
And under water hide their body safe.
If thou would'st these explore, they are at hand:
I'll take thee on my back.'"*

Tired of higher studies Thurlow became, in his retirement, a great reader of novels; and, in one instance, so interested was he in the plot, that he despatched his groom from Dulwich to London, after ten o'clock at night, for the concluding volume, that he might know the fate of the heroine before trying to go to sleep.

His love of novels.

His great ambition from early youth, and through life, was to shine in conversation, and in this department of genius he seems to have met with brilliant success. He had a stupendous memory, a quick sense of the ridiculous, a copious flow of words, and an *emphasis* in talk, which occasionally sup-

His great powers of conversation.

* Τὸν δ' αὖ Ψιχάρπαξ ἠμείβετο φωνησέντε·
Τίπτε γένος τοὐμὸν ζητεῖς, φίλε, δῆλον ἅπασιν
Ἀνθρώποις τε, θεοῖς τε, καὶ οὐρανίοις πετεηνοῖς;
Ψιχάρπαξ μὲν ἐγὼ κικλήσκομαι· εἰμὶ δὲ κοῦρος
Τρωξάρταο πατρὸς μεγαλήτορος, ἡ δέ νυ μήτηρ
Λειχομύλη θυγάτηρ Πτερνοτρώκτου βασιλῆος.
Γείνατο δ' ἐν καλύβῃ με, καὶ ἐξεθρέψατο βρωτοῖς,
Σύκοις καὶ καρύοις καὶ ἐδέσμασι παντοδαποῖσι.
Πῶς δὲ φίλον ποιῇ με, τὸν εἰς φύσιν οὐδὲν ὁμοῖον;
Σοὶ μὲν γὰρ βίος ἐστὶν ἐν ὕδασιν· αὐτὰρ ἔμοιγε,
Ὅσσα παρ' ἀνθρώποις, τρώγειν ἔθος. Οὐδέ με λήθει
Ἄρτος τρισκοπάνιστος ἐπ' εὐκύκλου κανέοιο,
Οὐδὲ πλακοῦς τανύπεπλος ἔχων πολὺ σησαμότυρον,
Οὐ τόμος ἐκ πτέρνης, οὐχ ἥπατα λευκοχίτωνα,
Οὐ τυρὸς νεόπηκτος ἀπὸ γλυκεροῖο γάλακτος,
Οὐ χρηστὸν μελίτωμα, τὸ καὶ μάκαρες ποθέουσιν,
Οὐδ' ὅσα πρὸς θοίνας μερόπων τεύχουσι μάγειροι
Κοσμοῦντες χύτρας ἀρτύμασι παντοδαποῖσιν.

. . . . .

Ἀλλὰ δύω μάλα πάντα, τὰ δείδια πᾶσαν ἐπ' αἶαν,
Κίρκον καὶ γαλέην, οἵ μοι μέγα πένθος ἄγουσι,
Καὶ παγίδα στονόεσσαν, ὅπου δολόεις πέλε πότμος.

. . . . .

Πρὸς τάδε μειδήσας Φυσίγναθος ἀντίον ηὔδα·
Ξεῖνε, λίην αὐχεῖς ἐπὶ γαστέρι· ἔστι καὶ ἡμῖν
Πολλὰ μάλ' ἐν λίμνῃ καὶ ἐπὶ χθονὶ θαύματ' ἰδέσθαι.
Ἀμφίβιον γὰρ ἔδωκε νομὴν βατράχοισι Κρονίων,
Σκιρτῆσαι κατὰ γῆν, καὶ ἐφ' ὕδασι σῶμα καλύψαι,
(Στοιχείοις δυσὶν μεμερισμένα δώματα ναίειν.)
Εἰ δ' ἐθέλεις καὶ ταῦτα δαήμεναι, εὐχερές ἐστι.
Βαῖνέ μοι ἐν νώτοισι.——

Hom. Batr. 24.

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plied the place of epigram. With these qualifications, if he had not made his fortune in the law, he would have risen to great eminence as a "diner out." He was rather fond of literary society, and laying aside all official privilege, he boldly descended into the arena against controversial gladiators. He received this high compliment from Doctor Johnson, while yet at the bar, "Depend upon it, sir, it is when you come close to a man, in conversation, that you discover what his real abilities are: to make a speech in a public assembly is a knack. Now I honour Thurlow, sir; Thurlow is a fine fellow; he fairly puts his mind to yours." After his Lordship had been elevated to be Chancellor, the great Lexicographer said to Boswell, "I would prepare myself for no man in England but Lord Thurlow. When I am to meet him, I should wish to know a day before." Jemmy goes on to say, "How he would have prepared himself, I cannot conjecture. Would he have selected certain topics, and considered them in every view, so as to be in readiness to argue them at all points? And what may we suppose those topics to have been? *I once started the curious inquiry to the great man who was the subject of this compliment: he smiled, but did not pursue it.*" *

Thurlow was not ill-natured in conversation; and Johnson was considered a more terrible opponent. Craddock, who knew both intimately, says: "I was always more afraid of Johnson than of Thurlow; for though the latter was sometimes very rough and coarse, yet the decisive stroke of the former left a mortal wound behind it." †

Lord Thurlow's "sittings."

According to the fashion still prevailing in his time, he used to have long symposiac *sittings* after dinner, during which his wit was stimulated by the brisk circulation of the bottle. "In the afternoon of life, conviviality, wine, and society unbent his mind. It was with Mr. Rigby, Lord Gower, Lord Weymouth, Mr. Dundas, and a few other select friends, that he threw off his constitutional severity." ‡ Though by no means subject to the charge of habitual intemperance, yet from

* Boswell's Life of Johnson, iv. 192. 350. † Cr. i. 74.
‡ Wrax. Mem. i. 527.

occasional indulgence he sometimes found himself in scenes, which, according to our sober notions, were not very fit for a Chancellor. "Returning, by way of frolic," relates Sir Nathaniel Wraxall, "very late at night, on horseback, to Wimbledon from Addiscombe, the seat of Mr. Jenkinson, near Croydon, where the party had dined, Lord Thurlow, the Chancellor, Pitt, and Dundas, found the turnpike-gate, situate between Tooting and Streatham, thrown open. Being elevated above their usual prudence, and having no servant near them, they passed through the gate at a brisk pace, without stopping to pay the toll, regardless of the remonstrances and threats of the turnpike-man, who running after them, and believing them to belong to some highwaymen who had recently committed some depredation on that road, discharged the contents of his blunderbuss at their backs. Happily he did no injury." *

The Chancellor and the Prime Minister when tipsy mistaken for highwaymen, and fired at.

There are a few of Thurlow's pointed sayings handed down to us, but I suspect that even a Boswell could not have supported for him the reputation he enjoyed in his own time. In the Duchess of Kingston's case, two learned Doctors of the Civil Law pouring forth heavily much recondite lore, having gravely argued that the sentence of the Ecclesiastical Court, annulling her first marriage, was decisive in her favour, — the Attorney General was pleased to remark, that "the congress of two civilians from Doctors' Commons always reminded him of the noted observation of Crassus, *Mirari se quod Haruspex Haruspicem sine risu adspicere posset.*" In the debates on the Regency, a prim Peer, remarkable for his finical delicacy, and formal adherence to etiquette, having cited pompously certain resolutions, which he said had been passed by a party of noblemen and gentlemen of great distinction at the Thatched House Tavern, the Lord Chancellor, in adverting to these, said, "As to what the noble Lord in the red riband told us that he had heard at the *alehouse* ——." Such strokes of coarse jocularity, tell more certainly in either House than the play of the most refined wit. — Even

Thurlow's sayings.

* Wrax. Mem. i. 478.

when in administration, he affected to laugh freely at official men and practices. Thus, when on the woolsack, having mentioned some public functionary whose conduct he intimated that he disapproved, he thought fit to add, "But far be it from me to express any blame of any official person, whatever may be my opinion; for that I well know would be sure to bring down upon me a panegyric on his character and his services!"—Lamenting the great difficulty he had in disposing of a high legal situation, he described himself as long hesitating between the intemperance of A. and the corruption of B., but finally preferring the man of bad temper. Afraid lest he should have been supposed to have admitted the existence of pure moral worth, he added,—"Not but that there was a d—d deal of corruption in A.'s intemperance."—Happening to be at the British Museum viewing the Townley Marbles, when a person came in and announced the death of Mr. Pitt, Thurlow was heard to say, "a d—d good hand at turning a period!" and no more. *

The following anecdote was related by Lord Eldon:—"After dinner, one day when nobody was present but Lord Kenyon and myself, Lord Thurlow said, 'Taffy, I decided a cause this morning, and I saw from Scott's face that he doubted whether I was right.' Thurlow then stated his view of the case, and Kenyon instantly said, 'Your decision was quite right.' 'What say you to that?' asked the Chancellor. I said, 'I did not presume to form a judgment upon a case in which they both agreed. But I think a fact has not been mentioned, which may be material.' I was about to state the fact and my reasons. Kenyon, however, broke in upon me, and with some warmth, stated that I was always so obstinate, there was no dealing with me. 'Nay,' interposed Thurlow, 'that's not fair. You, Taffy, are obstinate, and give no reasons; you, Jack Scott, are obstinate too; but then you give your reasons, and d—d bad ones they are!'"

Thurlow having heard that Kenyon had said to a party who had threatened to appeal from his decision, by filing a

* This last saying I have from a person who was present.

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bill in Chancery, "Go into Chancery then: *abi in malam rem!*"—the next time he met the testy Chief Justice, he said, "Taffy, when did you first think the Court of Chancery was such a *mala res?* I remember when you made a very *good thing* of it."

Pepper Arden, whom he hated and persecuted, having been made a Welsh Judge by Pitt, and still continuing to practise at the Chancery bar, was arguing a cause against his boon companion, Graham, and something turning upon the age of a lady, who swore she was only forty-five, he said he was sure she was more, and his antagonist looking dissent, he exclaimed, so as to be heard by all present, "I'll lay you a bottle of wine of it." Thurlow did not swear aloud, but by an ejaculation and a frown, called the unwary counsel to a sense of the impropriety he had committed. *Pepper Arden.* — "I beg your Lordship's pardon: I really forgot where I was." *Thurlow.* — "I suppose, Sir, you thought you were sitting on the bench in your own Court administering justice in Wales!"

**Thurlow's treatment of Cowper.**

Considering Thurlow's relish for literary society, we must wonder and regret that he did not continue to cultivate the friendship of the man with whom he had been so intimate, when they were fellow pupils in the Solicitor's office; but he does not seem by any means properly to have appreciated the fine imagination, the quiet humour, the simple manners, or the affectionate heart, which ought to have attached him to Cowper. While the poet watched with solicitude the career of the lawyer, rejoicing at every step of his advancement, the lawyer was quite indifferent to the successes or the sorrows of the poet. Cowper, though neglected and forgotten by his brother idler of Southampton Row, who now filled the most exalted office in the kingdom, hearing that he was laid up by the gout, lovingly blind to all his faults, thus writes to Mr. Hill:—"These violent attacks of a distemper so often fatal, are very alarming to those who esteem and respect the Chancellor as he deserves. A life of confinement and anxious attention to important objects, where the habit is bilious to such a terrible degree, threatens to be a short one;

**May 6. 1780.**

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and I wish he may not be made a topic for men of reflection to moralise upon, affording a conspicuous instance of the transient and fading nature of all human accomplishments and attainments." On Thurlow's elevation to the woolsack, Cowper was strongly advised to remind him of their former intimacy, but he declined to do so for the reasons expressed

Jan. 18. 1788.

in the following letter to Mr. Unwin: — "I feel much obliged to you for your kind intimation, and have given the subject of it all my best attention, both before I received your letter and since. The result is, that I am persuaded it will be better not to write. I know the man and his disposition well; he is very liberal in his way of thinking, — generous and discerning. He is well aware of the tricks which are played on such occasions; and after fifteen years' interruption of all intercourse between us, would translate my letter into this language, — 'Pray remember the poor.' This would disgust him, because he would think our former intimacy disgraced by such an oblique application. He has not forgotten me; and if he had, there are those about him who cannot come into his presence without reminding him of me; and he is also perfectly acquainted with my circumstances. It would, perhaps, give him pleasure to surprise me with a benefit, and if he means me such a favour, I should disappoint him by asking it." — However, at the continued instigation of his friends, he afterwards sent Thurlow a copy of his published poems, by this time familiar and dear to all men of taste, with the following stiff letter of compliment: —

"Olney, Bucks, Feb. 25. 1782.

"My Lord,

Cowper's letter to Thurlow, with a copy of his poems.

"I make no apology for what I account a duty; I should offend against the cordiality of our former friendship should I send a volume into the world, and forget how much I am bound to pay my particular respects to your Lordship upon that occasion. When we parted, you little thought of hearing from me again, and I as little thought I should live to write to you, still less that I should wait on you in the capacity of an author.

"Among the pieces which I have the honour to send, there is one for which I must entreat your pardon; I mean that of which your Lordship is the subject.* My best excuse is, that it flowed almost spontaneously from the affectionate remembrance of a connection which did me so much honour.

"I have the honour to be, though with very different impressions of some subjects, yet with the same sentiments of affection and esteem as ever, your Lordship's faithful and most obedient humble servant,

"W. COWPER."

Strange to say, for at least two months no notice was taken of this communication,—as we learn from a letter to another correspondent from the poet,—who, though piqued by this mortifying neglect, tried to reconcile himself to it by recollecting how much the Chancellor's time was occupied. Afterwards, through the mediation of Hayley, Thurlow, who seems to have much admired the tinsel of this versifier, was induced to take some notice of the author of the TASK and of JOHN GILPIN,—without either making any provision for him, or soothing him with personal kindness. Yet when Thurlow was out of office, in the year 1783, Cowper writes thus tenderly to Mr. Hill:—"I have an etching of the late Chancellor hanging over the parlour chimney. I often contemplate it, and call to mind the day when I was intimate with the original. It is very like him; but he is disfigured by his hat, which, though fashionable, is awkward; by his great wig, the tie of which is hardly discernible in profile; and by his band and gown, which give him an appearance clumsily sacerdotal. Our friendship is dead and buried."

After Thurlow had been some years restored to office, Cowper being again urged to apply to him for some promotion, thus wrote to Lady Hesketh:—"I do not wish to remind the Chancellor of his promise. Ask you why, my cousin? Because I suppose it would be impossible. He has no doubt forgotten it entirely, and would be obliged to Feb. 11. 1786.

* Ante, p. 520.

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take my word for the truth of it, which I could not bear. We drank tea together, with Mrs. C——e, and her sister, in King Street, Bloomsbury, and there was the promise made. I said, 'Thurlow, I am nobody, and shall be always nobody, and you will be Chancellor. You shall provide for me when you are.' He smiled, and replied, 'I surely will.'—'These ladies,' said I, 'are witnesses.' He still smiled and said, 'Let them be so, for I will certainly do it.' But, alas, twenty-four years have passed since the day of the date thereof, and to mention it now would be to upbraid him with inattention to the plighted troth. Neither do I suppose that he could easily serve such a creature as I am if he would."

Thurlow's early promise to provide for Cowper when he became Chancellor.

June 9. 1786. Cowper, though neglected, still attached to Thurlow.

Cowper seems to have persevered in his resolution not to claim performance of the promise. Yet a few months after he thus writes to Mr. Hill, showing his disinterested and unabated regard for his surly friend: "The paper tells me that the Chancellor has relapsed, and I am truly sorry to hear it. The first attack was dangerous, but a second must be more formidable still. It is not probable that I should ever hear from him again if he survives; yet, of what I should have felt for him had our connection never been interrupted, I still feel much. Every body will feel the loss of a man of such general importance."*

* Thurlow was probably disinclined to patronise Cowper from the part taken by the poet on the question of the African slave trade. He who thought the condition of the blacks much improved when sent from their own country to the West Indies, must have viewed with contempt

"The Negro's Complaint.

"Forc'd from home and all its pleasures,
Afric's coast I left forlorn,
To increase a stranger's treasures,
O'er the raging billows borne.
Men from England bought and sold me,
Paid my price in paltry gold;
But, though slave they have enroll'd me,
Minds are never to be sold."

The Chancellor's neglect of his early friend is thus ironically recorded by Peter Pindar:

"Yet let *one* action of the day shine forth
(And candour loves to dwell upon my tongue),
Thurlow could see a Cowper's modest worth,
And crown with fair reward his moral song."

Thurlow's admiration of Hayley.

While Cowper was thus neglected, the advances of Hayley, a stranger, met with a more flattering reception. From the low taste for poetry then prevailing in England, he was for a fleeting space celebrated as a genius, and Thurlow was pleased with being considered one of his patrons. We have from the very amiable but vapid versifier, a rather amusing account of their meeting:—

"Nov. 11.

"It will I know afford you pleasure to hear that I am engaged to breakfast with the Chancellor, at eight to-morrow morning. He has sent me a polite and cordial invitation by our friend Carwardine."

"Nov. 12.

Hayley's account of Thurlow's kindness to him.

"Though honours are seldom I believe found to be real enjoyments, yet I may truly say that I have had the honour of breakfasting to-day with the Chancellor, and thoroughly enjoyed it. Breakfast, you know, is my favourite social hour, and though I was by no means recovered from an oppressive cold, yet I passed a very pleasant hour or rather two with this singular great man. On my entrance, I told him that I was particularly flattered in being admitted at that friendly hour; for that I was such a hermit, and such a humourist that I had a horror of dining with a great man. As I came away, he said he hoped I would come some day to a private dinner with him where there was no more form than at his breakfast table; to which I replied, that if I found his dinner like his breakfast, I would come whenever he pleased." *

Hayley, emboldened by this condescension, sent the Chancellor a copy of some of the very worst of his poems, and immediately received the following complimentary answer. "The Chancellor presents his best respects to Mr. Hayley, and returns him many thanks for his poems. They give a bright relief to the subject. William is much obliged to him, and Mary more; and if it may be said without offence, liberty itself derives advantage from this dress." Hayley

* Mem. of Hayley, i. 370.

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exclaimed, "There's flattery for you from the great! Can any poetical vanity wish for more?"*

Correspondence between Thurlow and Cowper respecting the translation of Homer into blank verse.

The intercourse between the two Southampton-Row idlers was afterwards renewed. Thurlow, in his retirement, hearing that Cowper was engaged in a blank verse translation of Homer, expressed to a common friend some regret that he should not have preferred rhyme, of which he was so great a master, and in which he had been so successful. The poet thereupon, when he could no longer be suspected of flattering power, thus addressed the Ex-chancellor:—"I did not expect to find your Lordship on the side of rhyme, remembering well with how much energy and interest I have heard you repeat passages from the 'Paradise Lost,' which you could not have recited as you did, unless you had been perfectly sensible of their music. It comforts me, therefore, to know, that if you have an ear for rhyme, you have an ear for blank verse also. It seems to me that I may justly complain of rhyme as an inconvenience in translation, even though I assert in the sequel that to me it has been easier to rhyme than to write without, because I always suppose a rhyming translator to ramble, and always obliged to do so."

The following answer displays great critical acumen and depth of thought:—"The scrawl I sent Harry I have forgot too much to resume now. But I think I could not mean to patronise rhyme. I have fancied that it was introduced to mark the measure in modern languages, because they are less numerous and metrical than the ancient; and the name seems to impart as much. Perhaps there was melody in ancient song without straining it to musical notes, as the common Greek pronunciation is said to have had the compass of five parts of an octave. But surely that word is only figuratively applied to modern poetry. Euphony seems to be the highest term it will bear. I have fancied also that euphony is an impression derived a good deal from habit, rather than suggested by nature; therefore, in some degree, accidental, and consequently conventional. Else why can't

* Mem. of Hayley, i. 369.

we bear a drama with rhyme, or the French one without it? Suppose the 'Rape of the Lock,' 'Windsor Forest,' 'L'Allegro,' 'Il Penseroso,' and many other little poems which please, stripped of the rhyme, which might easily be done, would they please as well? It would be unfair to treat rondeaus, ballads, and odes in the same manner, because rhyme makes in some sort a part of the conceit. It was this way of thinking which made me suppose that habitual prejudice would miss the rhyme, and that neither Dryden nor Pope would have dared to give their great authors in blank verse.

"It is impossible to obtain the same sense from a dead language and an ancient author, which those of his own time and country conceived; words and phrases contract from time and use such strong shades of difference from their original import. In a living language, with the familiarity of a whole life, it is not easy to conceive truly the actual sense of current expressions, much less of older authors. No two languages furnish *equipollent* words; their phrases differ, their syntax and their idioms still more widely. But a translation, strictly so called, requires an exact conformity in all those particulars, and also in numbers; therefore it is impossible. I really think at present, notwithstanding the opinion expressed in your preface, that a translator asks himself a good question,—'How would my author have expressed the sentence I am turning into English?' for every idea conveyed in the original should be expressed in English as literally and fully as the genius and use and character of the language will admit of. You must not translate literally:—

'Old daddy Phœnix, a God-send for us to maintain.'

"I will end by giving you the strictest translation I can invent of the speech of Achilles to Phœnix, leaving you the double task of bringing it closer, and of polishing it into the style of poetry:—

"Ah! Phœnix, aged father, guest of Jove!
I relish no such honours; for my hope

Is to be honour'd by Jove's fated will,
Which keeps me close beside these sable ships,
Long as the breath shall in my bosom stay,
Or as my precious knees retain their spring.
Further I say; and cast it in your mind!
Melt not my spirit down by weeping thus,
And wailing only for that great man's sake,
Atrides: neither ought you love that man,
Lest I should hate the friend I love so well.
With me united, 'tis your nobler part
To gall his spirit, who has galled mine.
With me reign equal, half my honours share.
These will report; stay you here and repose
On a soft bed; and with the beaming morn
Consult we, whether to go home, or stay."

Cowper replied: — "We are of one mind as to the effect of rhyme or euphony in the lighter kinds of poetry. The pieces which your Lordship mentions, would certainly be spoiled by the loss of it, and so would all such. The ALMA would lose all its neatness and smartness, and HUDIBRAS all its humour. But in grave poems of extreme length, I apprehend that the case is different. I agree with your Lordship that a translation perfectly close is impossible, because time has sunk the original strict import of a thousand phrases, and we have no means of recovering it. But if we cannot be unimpeachably faithful, that is no reason why we should not be as faithful as we can; and if blank verse affords the fairest chance, then it claims the preference."

Thurlow, probably not convinced, sent the following good-humoured reply: — "I have read your letter on my journey through London, and as the chaise waits, I shall be short. I did not mean it as a sign of any proscription that you have attempted what neither Dryden nor Pope would have dared, but merely as a proof of their addiction to rhyme; for I am clearly convinced that Homer may be better translated than into rhyme, and that you have succeeded in the places I have looked into. But I have fancied that it might have been still more literal, preserving the ease of genuine English and melody, and some degree of that elevation which Homer derives from simplicity."

The soothed bard closed the correspondence with the following epistle, the last that ever passed between these

remarkable men, who had known each other half a century: —

"My Lord,

"I haunt you with letters, but will trouble you now with a short line only, to tell your Lordship how happy I am that any part of my work has pleased you. I have a comfortable consciousness that the whole has been executed with equal industry and attention, and am, my Lord, with many thanks to you for snatching such a busy moment to write to me,

"Your Lordship's obliged and affectionate
"humble Servant,
"WILLIAM COWPER."*

Thurlow's meritorious effort to assist Dr. Johnson.

Thurlow's generous anxiety to assist Dr. Johnson, proves to us that he was capable of appreciating real excellence, and should make us view his own failings with some forbearance. It is well known that the great lexicographer, shortly before his death, felt a strong desire, for the benefit of his health, to travel into Italy, and that to enable him to do so, his friends wished to obtain for him an augmentation of his pension from government. The bustling Boswell having applied on the subject to the Chancellor, received an answer containing these kind-hearted expressions: — "I am much obliged to you for the suggestion; and I will adopt and press it as far as I can. The best argument, I am sure, and I hope it is not likely to fail, is Dr. Johnson's merit. But it will be necessary, if I should be so unfortunate as to miss seeing you, to converse with Sir Joshua on the sum it will be proper to ask — in short, upon the means of setting him out. It will be a reflection on us all if such a man should

* Cowper, referring to these letters, writes to the Rev. Walter Bagot: "In answer to your question, 'if I have had a correspondence with the Chancellor?' I reply — Yes! We exchanged three or four letters on the subject of Homer, or rather on the subject of my Preface. He was doubtful whether or not my preference of blank verse, as affording opportunity for a closer version, was well founded. On this subject he wished to be convinced; defended rhyme with much learning and much shrewd reasoning, but at last allowed me the honour of victory, expressing himself in these words: *I am clearly convinced that Homer may be best rendered in blank verse, and you have succeeded in the passages that I have looked into.*" — *Hayley's Life of Cowper*, iii. 28.

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perish for want of the means to take care of his health." Mr. Pitt, who, though himself a scholar, and well grounded in political science, it must be confessed, never testified much respect for literary men, refused in the commencement of his administration to do any thing that might be construed into a job. "The Chancellor called on Sir Joshua Reynolds, and informed him that the application had not been successful; but after speaking highly of Dr. Johnson as a man who was an honour to his country, desired Sir Joshua to let him know that, on granting a mortgage of his pension, he should draw on his Lordship for five or six hundred pounds — explaining the meaning of the mortgage to be, that he wished the business to be conducted in such a manner that Dr. Johnson should appear to be under the least possible obligation."

Sept. 9. 1784. Dr. Johnson's letter to Thurlow.

The offer was declined, but called forth the following effusion of gratitude most honourable to both parties: — "My Lord, After a long and not inattentive observation of mankind, the generosity of your Lordship's offer raises in me not less wonder than gratitude. Bounty so liberally bestowed I should gladly receive, if my condition made it necessary; for to such a mind who would not be proud to owe his obligations? But it has pleased God to restore me to so great a measure of health, that, if I should now appropriate so much of a fortune destined to do good, I should not escape from myself the charge of advancing a false claim. My journey to the Continent, though I once thought it necessary, was never much encouraged by my physicians; and I was very desirous that your Lordship should be told of it by Sir Joshua Reynolds as an event very uncertain: for if I grew much better, I should not be willing; if much worse, not able to migrate. Your Lordship was first solicited without my knowledge; but, when I was told that you were pleased to honour me with your patronage, I did not expect to hear of a refusal; yet as I have had no long time to brood hope, and have not rioted on imaginary opulence, this cold reception has been scarce a disappointment; and from your Lordship's

kindness I have received a benefit, which only men like you are able to bestow. I shall now live, *mihi carior*, with a higher opinion of my own merit." *

Johnson, writing at the same time confidentially to Sir Joshua Reynolds, said, "Many words, I hope, are not necessary to convince you what gratitude is excited in my heart by the Chancellor's liberality, and your kind offices." †

Thurlow's generosity to Crabbe.

Thurlow afterwards made a generous atonement for his rough rejection of the claims of another man of genius. Crabbe, the poet, when he first came to London, being in a very destitute condition, wrote to the Lord Chancellor, inclosing him a copy of verses, and received for answer a note, in which his Lordship "regretted that his avocations did not leave him leisure to read verses." The indignant bard addressed to the professed contemner of poetry, some strong, but not disrespectful lines, intimating that, in former times, the encouragement of literature had been considered as a duty appertaining to the illustrious station which his Lordship held. Of this remonstrance no notice whatever was taken for a long time. But Burke and Sir Joshua Reynolds having mentioned in Thurlow's presence the genius and the destitution of the new aspirant, and that he was about to enter the Church, Crabbe, to his great amazement, received a note from the Lord Chancellor, politely inviting him to breakfast the next morning. The reception was more than courteous, the Chancellor exclaiming in a frank and hearty tone: — "The first poem you sent me, sir, I ought to have noticed — and I heartily forgive the second." They breakfasted together, and at parting his Lordship put a sealed paper into the poet's hand, saying, "Accept this trifle, sir, in the meantime, and rely on my embracing an early opportunity to serve you more substantially, when I hear that you are in orders." Instead of a present of ten or twenty pounds as the *donee* expected, the paper contained a bank note for 100*l.*, a supply which relieved him from all present difficulties. The promise of a living, I make no

* Boswell's Life of Johnson, vol. iv. p. 372. † Ib. 372.

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doubt would have been fulfilled, had not Crabbe soon after become chaplain to the Duke of Rutland, and received preferment from that liberal-minded nobleman. *

Thurlow, when a young man, crossed in love.

Thurlow was early in life honourably attached to an accomplished young lady, Miss Gooch—of a respectable family in Norfolk, "but she would not have him, for she was positively afraid of him." † He seems then to have foresworn matrimony.

When Lord Chancellor, with little censure from the world, he openly kept a mistress.

It is with great reluctance that I proceed; but I should give a very imperfect sketch of the individual and of the manners of the age, if I were to try to conceal that of which he was not ashamed, and which in his lifetime, with very slight censure, was known to all the world. Not only while he was at the bar, but after he became Lord Chancellor, he lived openly with a mistress, and had a family by her, whom he recognised, and without any disguise brought out in society as if they had been his legitimate children.—In like manner, as when I touched upon the irregularities of Cardinal Wolsey, I must remind the reader that every man is charitably to be judged by the standard of morality which prevailed in the age in which he lived. Although Mrs. Hervey is sometimes satirically named in the "Rolliad" and other contemporary publications, her *liaison* with the Lord Chancellor seems to have caused little scandal. In spite of it he was a prime favourite, not only with George III. but with Queen Charlotte, both supposed to be very strict in their notions of chastity; and his house was not only frequented by his brother the Bishop, but by ecclesiastics of all degrees,—who celebrated the orthodoxy of the head of the law,—his love of the established church,—and his hatred of dissenters. ‡ It should

* Life of Crabbe, 101. 56.

† Her own words in extreme old age. She was married to Dr. D'Urban, a physician at Shottisham, the father of the venerable Sir Benjamin D'Urban. There was a relationship between the Gooches and the Thurlows—and their intercourses being renewed, old Mrs. Gooch used to call Edward Thurlow "child," while he called her "mother." She often related that Thurlow, when Attorney General, having rode over to Shottisham to visit them, as he was taking leave, and mounting his horse, she said to him, "Well, child, I shall live to see you Lord Chancellor." His answer was, "I hope so, mother."

Improved morals of lawyers.

‡ When I first knew the profession, it would not have been endured that any one in a judicial situation should have had such a domestic establishment as Thurlow's, but a majority of the Judges had married their mistresses.

likewise be stated in mitigation, that he was an affectionate parent, and took great pains with the education and breeding of his offspring. A son of his is said to have died at Cambridge when about to reach the highest honours of the university. His three daughters accompanied him in all the tours he made after his retirement from office, and were in good society. Craddock relates that "one evening the Miss Thurlows being at a Hampstead assembly, in returning, were in some danger from a riot at the door, and that they were rescued by a young officer who handed them to their carriage. In consequence the Lord Chancellor calling upon him next morning to thank him, and finding him at breakfast, offered to partake of it."*—Two of them were well married. The third made a love match against his will, and though he was reconciled to her, he never would consent to see her husband.

His kindness to his children.

It has been said that Thurlow was a sceptic in religion; but I do not believe that there is any foundation for this assertion, beyond the laxity of his practice, and an occasional irreverence in his expressions on religious subjects,—which, however censurable, were not inconsistent with a continuing belief in the divine truths he had been taught by his pious parents. A letter from him to a gentleman who had obtained a prize for a Theological Essay, and to whom he gave a living, displays great depth of thinking, and may be reconciled to orthodoxy:—

Justification of Thurlow from the charge of scepticism.

"Sir, "Oct. 13. 1785.

"I return you many thanks for your Essay, which is well composed, notwithstanding the extent, difficulty, and

The understanding then was, that a man elevated to the bench, if he had a mistress, must either marry her or put her away. For many years there has been no necessity for such an alternative.—The improvement in public morals, at the conclusion of the 18th century, may be mainly ascribed to George III. and his Queen, who, though being unable to lay down any violent rule, or to bring about any sudden change, they were obliged to wink at the irregularities of the Lord Chancellor—not only by their bright example, but by their well-directed efforts, greatly discouraged the profligacy which was introduced at the Restoration, and continued, with little abatement, till their time.

* "An anecdote introduced to prove that Lord Thurlow could be a courteous nobleman, as well as an affectionate parent."—*Crad.* i. 75.

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delicacy of the subject. The mode of future existence is not delineated to the human mind; although the object is presented to their hope, and even recommended to their imagination. Upon this, the humbler, perhaps, the safest reflection seems to be, that human sense is capable of no more, while perfect Faith is recommended. Is it not dangerous to insinuate, that sensible conviction might lessen the importance of worldly concerns too much? (p. 23.)

"Perhaps, also, the speculation is not free from danger, when improved disquisition, enriched imagination, and livelier affection are distinctly assumed, as the attainments of a state, which is to be so much changed, that it cannot be, or at least is not revealed to the human sense. (p. 12. 15. 17.)

"Perhaps more is put upon the immateriality of the soul than the negative of a thing so unknown as matter, is worth. (p. 7.)

"The observation at the head of the next page seems to dispose of the question more solidly and piously. When the Philosopher despises a Heaven on the other side of the blue mountains, in which the company of a faithful dog makes a principal article of enjoyment, is he sure that his visions are more wise, in proportion as they are less sensible?

"Perhaps the certainty that God is good, affords a surer hope, and not less distinct.

"Your's, &c.

"THURLOW."

Burke's unfair sarcasm on Thurlow's irreligion.

There seems to have been, however, a prevalent opinion among his contemporaries, that he was lax in his religious observances. Of this Burke took rather an unfair advantage during Hastings's trial. Commenting upon the arrest of a Rajah at the hour of his devotions, he said: "It has been alleged, in extenuation of the disgrace, that the Rajah was not a Brahmin. Suppose the Lord Chancellor should be found at his devotions (*a laugh*), — surely we may suppose the keeper of the King's conscience so employed (*renewed laughter*), and suppose that, while so employed, he should be violently interrupted and carried off to prison, — would it

remove or lessen the indignity that he was not a Bishop? No! the Lord Chancellor would think of the prayers he had lost, and his feelings would be equally acute as if he wore lawn sleeves in addition to the robes of his office, and his full-bottom wig." The reporter adds, "None were grave at this sally save the Chancellor himself, who looked like a statue of JUPITER TONANS, and cared as little for exercises of piety."

Thurlow naturally tender-hearted.

Under ostentatiously rough manners, I am inclined to believe that he preserved great kindness of disposition, and there can be no doubt that, if at last a little hardened from being long hackneyed in the ways of the world, he was naturally tender-hearted. When still a young man, he lost his favourite sister, to whom he had been most affectionately attached. I have great pleasure in laying before the reader a most feeling and beautiful letter, written by him to the physician who had attended her, and who had announced to him her dissolution after a long and painful illness.

Letter from him on the death of his sister.

"Dear Doctor Manning,

"I return you many thanks for your letter, which I can almost bring myself to call agreeable. The two last letters I received from my brother, convinced me that she was not to be saved by nature or art; and it quite harrowed me to reflect on the pain she endured. I suppose the frailty of all human things makes it a common accident: but I have brought myself to think it my own singular ill fortune to be disappointed in every thing I have ever set my heart upon. In general, it is my point to withstand any extraordinary affection for any article in life, but I forgot myself in this instance. My sister was singularly agreeable to me, and I was equally assiduous in courting her friendship and cultivating her affection. The wretched end of it is, that I never was so unhappy before.

"But it is foolish to trouble you with any more of this: I cannot omit, however, expressing my sensibility of your tenderness and attention to her, and my perfect satisfaction in your skill and care; a mighty dull and gloomy satisfaction,

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but it is all the ablest and kindest physicians can expect in so melancholy an hour.

"I am, dear Sir, with great respect,
"Your most obliged
"and obedient Servant,
"E. THURLOW.

"Inner Temple, Friday." *

His kindness to his brothers.

Lord Thurlow was very kind to his brothers. For one of them he obtained successively the great living of Stanhope, the Mastership of the Temple, the Deanery of Rochester, the Deanery of St. Paul's, the Bishopric of Lincoln, and the Bishopric of Durham. On a son of this brother he conferred a sinecure in the Court of Chancery, for which a compensation is now received of 9000*l.* a year. He provided, likewise, very amply for his other kinsmen. What more proved the goodness of his disposition was, that notwithstanding occasional gusts of passion, which they were a little afraid of, he continued to live with them all on terms of great familiarity. Soon after he was made Lord Chancellor, he addressed his clerical brother in the following terms:— "Tom, there is to be a drawing-room on Thursday, when I am obliged to attend, and as I have purchased Lord Bathurst's coach, but have no leisure to give orders about the necessary alterations, do you see and get all ready for me." The Bishop forgot to get the arms altered, and the Earl's coronet reduced to a Baron's. Afraid of a storm, he resorted to the expedient of ordering the door to be opened as soon as the carriage stopped at the house, and held open till the Lord Chancellor was seated, who having examined the interior, stretched out his hand, and most kindly exclaimed, "Brother, the whole is finished entirely to my satisfaction, and I thank you." † The same expedient was resorted to again at his return from St. James's, and by the next levèe day, the carriage was altered according to the rules of heraldry.

His person and manners.

I have already had occasion to refer more than once to Thurlow's personal appearence, and particularly to his dark

* Written about 1768. † Cr. i. 72.

complexion, and bushy eyebrows. O'Keefe, the famous farce writer, has left us a little portrait of him shortly before he was removed from office, at a moment when he must have been suffering from bodily pain: "I saw Lord Thurlow in court: he was thin and seemed not well in health; he leaned forward with his elbows on his knees, which were spread wide, and his hands clutched in each other. He had on a large three-cocked hat, his voice was good, and he spoke in the usual judge style, easy and familiar." But, generally speaking, although pretending to despise the opinion of others, he was acting a part, and his aspect was more solemn and imposing than almost any other person's in public life — so much that Mr. Fox used to say, "it proved him dishonest, since no man could *be* so wise as Thurlow *looked*."

The late Lord Holland's memory of him.

His manner made an awful impression on all who beheld him, and I have seen this successfully mimicked by the late Lord Holland, so as not only to create a belief of profound wisdom, but to inspire some apprehension into the company present of being committed to the Fleet, or of being taken into custody by the Gentleman Usher of the Black Rod. Yet, in private life, he could, on rare occasions, lay aside his terrors, — affecting mildness and politeness. Once when at Bath, he went to the pump-room and sat there, booted and spurred. Being informed by the master of the ceremonies, that it was against rule to appear there with spurs, he said, "the rules of Bath must not be disputed," and not only ordered his spurs immediately to be taken off, but that an apology should be made in his name to the company.*

His good-humour in private life.

His occasional vulgarity.

"Many stories of Thurlow's rudeness," says his friend Craddock, "have been in circulation; but it should be fairly stated that he was ever more cautious of speaking offensively amongst inferiors than amongst the great, where he sometimes, indeed, seemed to take a peculiar pleasure in giving proofs of his excessive vulgarity. A single instance of this singular humour will be sufficient. On his return from

* Cr. i. 78.

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Scarborough, he made visits to some of those splendid mansions with which the county of York so greatly abounds, and a friend of mine had the honour to meet him at one of them, then full of very high company. Whilst walking in the garden, and they were all admiring the elegancies which surrounded them, the noble proprietor being near the hot-house, turned to the Lord Chancellor, and politely asked him whether he would not walk in and partake of some grapes. 'Grapes!' said Thurlow, 'did I not tell you just now I had got the gripes?' The strangers in the company were all petrified with astonishment."

His saying to a deputation of Presbyterians.

A body of Presbyterians made an application to him to assist in repealing certain statutes which disqualified them from holding civil offices. He received the deputation with great civility, but in his own blunt manner replied, "Why, gentlemen, if your old sour religion had been the Establishment, I might have complied; but as it is not, you cannot expect me to accede to your request." They retired, smiling, and probably less dissatisfied than if he had tried to reason them into a conviction of the justice of the Test and Corporation Acts.*

His advice to George III. about giving the royal assent to bills.

Although he by no means despised the smiles of royalty, and "principibus placuisse viris" was not a low object of ambition with him, he was a courtier in his own peculiar fashion, and sometimes he used a freedom of speech which from any other man would have been offensive. Lord Eldon used to relate the following anecdote: "Once, when the mind of George III. was not supposed to be very strong, I took down to Kew some acts for his assent, and I placed on a paper the titles and the effect of them. The King, perhaps suspicious that my coming down might be to judge of his competence for public business, as I was reading over the titles of the different acts, interrupted me, and said, 'You are not acting correctly, you should do one of two things, either bring me down the acts for my perusal, or say, as Thurlow once said to me on a like occasion: having read several, he stopped and said, 'It was all damned nonsense trying to make

* Cr. i. 73

me understand them, and that I had better consent to them at once.'"

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His speech when the Prince of Wales took the *pas* of him.

On the occasion of a public procession, the Prince, who had taken offence at something Thurlow had said or done, rudely stept in before the Chancellor. Thurlow observed, "Sir, you have done quite right: I represent your royal Father: Majesty walks last. Proceed, Sir."

His answer when the Prince invited him to dinner.

At Brighthelmstone the Prince of Wales, living with a gay set of frivolous young men who displeased the Ex-chancellor much, asked him frequently to dinner, but always met with an excuse. At last, walking in front of the Pavilion in company with them, he met Lord Thurlow, and pressed him much to dine with him, saying, "You must positively name a day." Lord Thurlow, looking at the party who were with the Prince, said, "If I must name a day or time, it shall be when your Royal Highness keeps better company."

Difference with the Prince about giving him advice.

At another time Lord Thurlow had voluntarily given the Prince some advice, which was far from being palatable. His Royal Highness was so angry that he sent to him to say, that in future Carlton House Gates would be shut against him. Lord Thurlow answered,—"I am not surprised; proffered favours always stink." The Prince, conscious of the ungenerous return he had made, acknowledged his error, and they again became friends.

The Prince once sent Sir Thomas Tyrwhitt to the Ex-chancellor, to ask his opinion respecting some difference in the royal family. "You may tell your master," said Thurlow, "I shall not give him my opinion." "My Lord," said Sir Thomas, "I cannot take that message to his Royal Highness." "Well then," said Lord Thurlow, "you may tell him from me, that if he can point out one single instance in which he has followed my advice, I will give him my opinion on this matter."

Traditionary anecdotes, to show the violence of his temper, particularly on the marriage of his favourite daughter without his consent, I pass over as not sufficiently authenticated *;

* His family accounted for his whimsicalities in his later years by the shock he sustained from the flight of this daughter — to whom he had been so much attached, that he made himself master of the principles of thorough-bass that he might superintend her musical practice.

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but it is certain that, by reason of a quarrel he had with Holland, the architect, who had contracted to build a grand new house for him at Dulwich, he would never enter it, and he continued to live in a small inconvenient lodge close by.*

Habit of profane swearing.

In Thurlow's time, the habit of profane swearing was unhappily so common that Bishop Horsley, and other right reverend prelates, are said not to have been entirely exempt from it; but Thurlow indulged in it to a degree that admits of no excuse. I have been told by an old gentleman, who was standing behind the woolsack at the time that Sir Ilay Campbell, then Lord Advocate, arguing a Scotch appeal at the bar in a very tedious manner, said, "I will noo, my Lords, proceed to my seevent pownt." "I'll be d——d if you do," cried Thurlow, so as to be heard by all present; "this House is adjourned till Monday next," and off he scampered. — Sir James Mansfield, Lord Chief Justice of the Common Pleas, used to relate that while he and several other legal characters were dining with Lord Chancellor Thurlow, his Lordship happening to swear at his Swiss valet when retiring from the room, the man returned, just put his head in, and exclaimed "I von't be d——d for you, Milor," which caused the noble host and all his guests to burst out into a roar of laughter. †—From another valet he received a still more cutting retort. Having scolded this meek man for some time without receiving any answer, he concluded by saying, "I wish you were in hell." The terrified valet at last exclaimed, "I wish I was, my Lord! I wish I was!"

Sir Thomas Davenport, a great nisi prius leader, had been intimate with Thurlow, and long flattered himself with the hopes of succeeding to some valuable appointment in the law, but several good things passing by, he lost his patience and temper along with them. At last he addressed this laconic application to his patron: — "THE CHIEF JUSTICE-

His quarrel with Holland, the architect.

* An action brought against him by Holland came on for trial before Lord Kenyon, who, for the dignity of the Chancellor, got it referred to arbitration.

† I am afraid that profane swearing was then much practised by men of all degrees in Westminster Hall. I remember when Sir James Mansfield was Chief Justice of the Common Pleas, and the unruly members of the coif who practised before him led him a most wretched life, it was said that one evening, having fallen asleep on a sofa in a lady's drawing-room, he was heard to call out several times in his dream, "G— d—— the Serjeants!"

SHIP OF CHESTER IS VACANT; AM I TO HAVE IT?" and received the following laconic answer: — "NO! BY GOD! KENYON SHALL HAVE IT!"

Having once got into a dispute with a Bishop respecting a living of which the Great Seal had the alternate presentation, the Bishop's secretary called upon him, and said, "My Lord of —— sends his compliments to your Lordship, and believes that the next turn to present to —— belongs to his Lordship."—*Chancellor.* "Give my compliments to his Lordship, and tell him that I will see him d——d first before he shall present."—*Secretary.* "This, my Lord, is a very unpleasant message to deliver to a Bishop."—*Chancellor.* "You are right, it is so; therefore tell the Bishop that I will be d——d first before he shall present."

Thurlow's great merit.

With all his faults, it must ever be remembered to his honour that, by his own abilities alone, without flattery of the great, or mean compliances with the humours of others, he raised himself from obscurity to the highest dignity in the State; — that no one can ascribe his rise to reputed mediocrity, which is sometimes more acceptable than genius, and that for a period of forty years he not only preserved an ascendency among distinguished lawyers, statesmen, and orators, but that he was regarded with respect and esteem by eminent poets, moralists, and divines.

Contemporary character of him while he was Attorney General.

I shall conclude this memoir with sketches of him by some of his contemporaries, which may better enable the reader justly to estimate his merits than any observations of mine. The first is from a volume published in 1777, when he was Attorney General, entitled, "Public Characters," in which it is remarkable that his name is spelt "Thurloe," like that of Cromwell's Secretary: — "His voice is harsh, his manner uncouth, his assertions made generally without any great regard to the unities of time, place, or probability. His arguments frequently wild, desultory and incoherent. His deductions, when closely pressed, illogical, and his attacks on his adversaries, and their friends, coarse, vulgar, and illiberal, though generally humorous, shrewd, and *pointedly severe.*"

"The Chancellor Thurlow," says Bishop Watson, "was an able and upright Judge; but as the Speaker of the

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Character of him by Bishop Watson.

House of Lords, he was domineering and insincere. It was said of him in the Cabinet, he opposed every thing, proposed nothing, and was ready to support any thing. I remember Lord Camden's saying to me one night when the Chancellor was speaking contrary, as I thought, to his own conviction: "There now, I could not do that; he is supporting what he does not believe a word of." * "Few," says Colton, "have combined more talent with more decision than Lord Thurlow. Nature seems to have given him a head of crystal and nerves of brass." †

By Sir Nathaniel Wraxall.

Sir Nathaniel Wraxall, describing the state of parties in the year 1781, says, "Lord Thurlow, who at this time had held the Great Seal between two and three years, though in point of age the youngest member of the Cabinet, enjoyed in many respects greater consideration than almost any other individual composing it. — Lord North had derived the greatest assistance from his eloquence and ability. His removal to the House of Peers would have left an awful blank on the Treasury bench in the midst of the American war, if his place had not, during the two succeeding years, been ably, perhaps fully, supplied by Wedderburn. As Speaker of the Upper House, Lord Thurlow fulfilled all the expectations previously entertained of him. His very person, figure, voice, and manner, were formed to lend dignity to the woolsack. Of a dark complexion, and harsh but regular features, with a severe and commanding demeanour, which might be sometimes denominated stern, he impressed his auditors with awe before he opened his lips. Energy, acuteness, and prodigious powers of argument characterised him in debate. His comprehensive mind enabled him to embrace the question under discussion, whatever it might be, in all its bearings and relations. Nor, if we except Lord Camden, who was already far advanced in life, did the opposition possess any legal talents in the House of Peers that could justly be put in competition with those of Lord Thurlow. These admirable points were, nevertheless, by no means unaccompanied by corresponding defects. As Lord Chancellor, he was accused of procrastination in suffering the causes brought before him

* Life of Watson, 221.

† "Lacon," i. 45.

in his court to accumulate without end. Perhaps this charge, so frequently made against those who have held the Great Seal, was not more true as applied to him, than of others who succeeded him in his office. But even in parliament his temper, which was morose, sullen, and untractable, sometimes mastering his reason, prevented him from always exerting the faculties with which Nature had endowed him, or at least clouded and obscured their effect. In the Cabinet, these defects of character, which rendered him often impracticable, were not to be surmounted by any efforts or remonstrances. It can hardly be believed, that at ministerial dinners, where, after the cloth was removed, measures of state were often discussed or agitated, Lord Thurlow would frequently refuse to take any part. He has even more than once left his colleagues to deliberate, whilst he sullenly stretched himself along the chairs, and fell, or appeared to fall, fast asleep. If I had not received this fact from an eye-witness, and a member of the Cabinet, I should not, indeed, venture to report so improbable a circumstance. Notwithstanding the ruggedness and asperity which he displayed, — qualities that procured him the nickname of *the tiger*,—no man could at times appear more pleasing, affable, and communicative in conversation. I have once or twice seen him on such occasions, which were more highly valued because they were rare or unexpected. Possessed of faculties so transcendent, however mingled with human weakness and infirmity, he must always be considered as one of the most eminent individuals who sat in the Councils of George III. at any period of his reign." *

By Bishop Horsley.

In 1796, Bishop Horsley thus dedicated to Thurlow his "Prosodies of the Greek and Latin Language." "Although, I wish at present to be concealed, I cannot persuade myself to send this Tract abroad without an acknowledgment, which perhaps may betray me, of how much my mind has been informed, and my own opinions upon this subject have been confirmed, by conversations which many things in this Essay will bring to your recollection. Were I to form a wish for my

* Wraxall's Memoirs, vol i. p. 527.

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country, it should be that your Lordship might again be called to take part in her councils, where you would display that wisdom, firmness of principle, and integrity, with which you so long adorned one of the highest public stations. A better wish, perhaps, for you may be, that you may enjoy many years of learned leisure."

By Dr. Parr.

Next comes the portrait of Thurlow by Dr. Parr, which, although the features he exaggerated, almost to caricature, certainly presents a very striking likeness:—"Minas possumus contemnere vocemque fulmineam Thrasonici istius oratoris τοῦ τὰς ὀφρῦς κυανέας ἐπηρκότος, cujus vultum, uti Noviorum istius minoris, ferre posse se negat quadruplatorum genus omne et subscriptorum. Quid enim? truculentus semper incedit, teterque, et terribilis aspectu. De supercilio autem isto quid dicendum est? annon reipublicæ illud quasi pignus quoddam videtur? annon senatus illo, tanquam Atlante cœlum, innititur?—Profecto non desunt qui Novium existiment in 'summa feritate esse versutissimum, promtumque ingenio ultra Barbarum.' Quod si demseris illi aut σφοδρότητα quanta in Bruto fuit, aut πικρότητα vere Menippeam, aut προσώπου σκυθρότητα propriam et suam, facile ejus vel prudentiæ vel fidei juris nodos legumque ænigmata ad solvendum permiseris.—Fervido quodam et petulanti genere dicendi utitur, eodemque, nec valde nitenti, nec plane horrido. Solutos irridentium cachinnos ita commovet, ut lepores ejus, scurriles et prorsus veteratorios diceres. Omnia loquitur verborum sane bonorum cursu quodam incitato, itemque voce, qua ne subsellia quidem ipsa desiderant pleniorem et grandiorem. In adversariis autem lacerandis ita causidicorum figuras jaculatur, ita callida et malitiosa juris interpretatione utitur, ita furere et bacchari solet, ut sæpe mirere tam alias res agere optimates, ut sit pene insano inter disertos locus.—Fuit ei, perinde atque aliis, fortuna pro virtutibus. Didicit autem a Muciano, satis clarum esse apud timentem, quisquis timeatur. Corpore ipse ingens, animi immodicus, verbis magnificus, et specie inanium magis quam sapientia validus, studia ad se Optimatium illexit, eamque adeptus est auctoritatem, quæ homini novo pro facundia esse posset. Scilicet, quæ bonis Titio, Seioque turpissima forent, Novium

nostrum maxime decent, siquidem e subselliis elapsus de Tribunali nunc pronuntiet, et ex præcone actionum factus sit institor eloquentiæ senatoriæ. Quam igitur in civitate gratiam dicendi facultate Q. Varius consecutus est, vastus homo atque fœdus, eandem Novius intelligit, illa ipsa facultate, quamcunque habet, se esse in Senatu consecutum—

'Ellum, confidens, catus:
Cum faciem videas, videtur esse quantivis pretî:
Tristis severitas inest in voltu, atque in verbis fides.'"*

By Peter Pindar

After the effort of perusing this somewhat pedantic production, the reader may be relieved by a few characteristic notices of our hero from the pen of *Dr. Wolcot*, a lively though scurrilous poet, who, under the title of PETER PINDAR, amused the latter end of the eighteenth century: in his Ode "to the Royal Academicians," on portrait painting, he gives them this caution:

"Copy not Nature's form too closely
Whene'er she treats your *sitter* grossly.
As, for example, let us now suppose
Thurlow's black scowl and Pepper Arden's nose."

In another satirical ode, he thus refers to Thurlow's rough manners and habit of swearing:

"How pithy 'twas in Pitt, what great good sense,
Not to give Majesty the least offence!
Whereas the Chancellor, had he been there,
Whose tutor, one would say, had been a bear;
Thinking a Briton to no forms confin'd,
But born with privilege to speak his mind,
Had answer'd with a thundering tongue,
'I think your Majesty d——n wrong.'"

And he is made to go on to swear still more profanely.

In enumerating those who assisted in the public Thanksgiving at St. Paul's, on the King's recovery, this satirist describes—

"A great Law Chief, whom God nor demon scares,
Compell'd to kneel and pray, who *swore* his prayers;
The devil behind him pleas'd and grinning;
Patting the angry lawyer on the shoulder,
Declaring aught was never *bolder*,
Admiring such a *novel* mode of sinning."

* Preface to Bellendenus.

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By reason of Peter Pindar's violent attacks on Thurlow and other Peers, there was a proposal to bring him to the bar of the House for a breach of privilege—to which Peter in his "Ode to the Peers" refers:

> "Yes! yes! I hear that you have watch'd my note,
> And wish'd to squeeze my tuneful throat;
> When Thurlow your designs most wisely scouted,
> Swearing the poet should not *yet* be knouted."

The Ex-chancellor's intimacy with the Prince attracting the attention of the public, was celebrated in an Epistle from Peter Pindar, thus beginning—

> "Thurlow now is the Carlton House Mentor:
> You know him, Nic; bony and big,
> With a voice like the voice of a Stentor,
> His old phiz in a bushel of wig.
> All the pages, and footmen, and maids,
> As his *Wisdom* march'd solemnly in,
> (The impudent varlets and jades!)
> Gather'd round him with wonder and grin."

In conclusion there is this softening stanza:

> "Yet this in his praise I will say,
> That whether he's sober or mellow,
> Though as blunt as a bear in his way,
> True Genius *admires* the old fellow."

By a surviving relative.

I have now much pleasure in giving a sketch of him by a surviving kinsman who knew him well, and was tenderly attached to him: "His countenance was that of a man of the strongest sense, and his eye most penetrating and commanding. His stature was lofty and full of dignity, and his manners and address highly polished. He could assume the sternest character if necessary, or the sweetest smile I ever beheld. This stern exterior was, I have often thought, put on to cover the most kind and feeling heart, and his real nature was but little known but to those who had the happiness of living in his society. I remember hearing Lord Thurlow read from Shakspeare's play of the Merchant of Venice, that beautiful scene of the judgment of Portia. 'Then must the Jew be merciful.'—*Shylock.* 'On what compulsion must I? tell me that.'—*Portia.* 'The quality of mercy is not strained, it droppeth as the gentle dew from Heaven upon the place beneath,' &c.; and perceiving a slight tremu-

lousness in his voice, I looked up and saw the tears in his eyes. — When Lord Thurlow had a severe fit of the gout, he used to be wheeled in a Merlin's chair from his sitting-room to his bed-room at an early hour; it was in the summer season, and when the proper minute came, his valet Buissy, without asking any questions, told his master it was time to go to bed, and began to wheel the chair with the Ex-chancellor in it towards the bed-room. 'Let me alone,' said the Ex-chancellor. 'My Lord, it is time to go to bed.' 'I won't go yet, come again.' 'No, my Lord, it is time for your Lordship to go to bed, and you must go.' 'You be d——d, I will not go.' Away went the Ex-chancellor, threatening and swearing at the man, which I could hear like deep thunder for some time. The Ex-chancellor had succumbed, knowing that his good only was considered by his faithful domestic."

Thurlow's probationary Ode in the Rolliad.

I shall conclude with a metrical effusion from the Rolliad, professing to be composed by the Lord Chancellor Thurlow himself, to show his qualification for the office of Poet Laureat, then vacant. I need not remind the reader that, with some just satire upon his swearing propensity, and other failings imputable to him, this *jeu d'esprit* shows the malice of the discomfited Whigs, who were driven to console themselves in almost hopeless opposition by personal attacks on their opponents—not sparing royalty itself:

"IRREGULAR ODE,

"By Edward Lord Thurlow,

"*Lord High Chancellor of Great Britain.*

I.

"Damnation seize ye all!
Who puff, who thrum, who bawl and squall!
Fir'd with ambitious hopes, in vain,
The wreath, that blooms for other brows, to gain.
Is Thurlow yet so little known?—
By —— I swore, while George shall reign,
The Seals, in spite of changes, to retain,
Nor quit the woolsack till he quits the Throne!
And now, the bays for life to wear,
Once more, with mightier oaths, by —— I swear!
Bend my black brows that keep the Peers in awe,
Shake my full-bottom wig, and give the nod of law.

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II.

"What though more sluggish than a toad,
Squat in the bottom of a well,
I, too, my gracious Sov'reign's worth to tell,
Will rouse my torpid genius to an Ode!
The toad a jewel in his head contains —
Prove we the rich production of my brains!
Nor will I court, with humble plea,
Th' Aonian Maids to inspire my wit:
One mortal girl is worth the Nine to me;
The prudes of Pindus I resign to Pitt.
His be the classic art, which I despise; —
Thurlow on Nature, and himself, relies.

III.

"'Tis mine *to keep the conscience of the King;*
To me, each secret of his heart is shown:
Who then, like me, shall hope to sing
Virtues, to all but me unknown?
Say who, like me, shall win belief
To tales of his paternal grief,
When civil rage with slaughter dy'd
The plains beyond th' Atlantic tide?
Who can, like me, his joy attest,
Though little joy his looks confest,
When Peace, at Conway's call restor'd,
Bade kindred nations sheathe the sword?
How pleas'd he gave his people's wishes way,
And turn'd out North, when North refus'd to stay?
How in their sorrows sharing too, unseen,
For Rockingham he mourn'd, at Windsor, with the Queen?

IV.

"His bounty, too, be mine to praise,
Myself th' example of my lays,
A Teller in reversion I;
And unimpair'd I vindicate my place,
The chosen subject of peculiar grace,
Hallow'd from hands of Burke's economy:
For so his royal word my Sovereign gave;
And sacred here I found that *word* alone,
When not his Grandsire's *patent*, and his own,
To Cardiff, and to Sondes, their posts could save.
Nor should his chastity be here unsung,
That chastity, above his glory dear;
* But Hervey, frowning, pulls my ear;
Such praise, she swears, were satire from my tongue.

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* "I originally wrote this line:

But Hervey, frowning, as she hears, &c.

It was altered as it now stands by my d—mn'd Bishop of a brother, for the sake of an allusion to Virgil:

——— Cynthius aurem
Vellit, et admonuit."

V.

"Fir'd at her voice, I grow profane,
A louder yet, and yet a louder strain!
To Thurlow's lyre more daring notes belong.
Now tremble every rebel soul,
While on the foes of George I roll
The deep-ton'd execrations of my song.
In vain my brother's piety, more meek,
Would preach my kindling fury to repose;
Like Balaam's ass, were he inspir'd to speak,
'Twere vain! resolv'd I go to curse my Prince's foes.

VI.

"Begin! begin!" fierce Hervey cries;
"See! the Whigs, how they rise!
What petitions present!
How *tease* and *torment!*
D—mn their bloods, d—mn their hearts, d—mn their eyes.
Behold yon sober band,
Each his notes in his hand;
The witnesses they, whom I browbeat in vain;
Unconfus'd they remain.
O! d—mn their bloods again;
Give the curses due
To the factious crew!
Lo! Wedgwood, too, waves his Pitt-pots* on high!
Lo! he points where the bottoms, yet dry,
The *visage immaculate* bear;
Be Wedgwood d—mn'd, and double d—mn'd his ware.
D—mn Fox, and d—mn North;
D—mn Portland's mild worth;
D—mn Devon the good,
Double d—mn all his name;
D—mn Fitzwilliam's blood,
Heir of Rockingham's fame;
D—mn Sheridan's wit,
The terror of Pitt;
D—mn Loughb'rough, my plague — would his bagpipe were split!
D—mn Derby's long scroll,
Fill'd with names to the brims:
D—mn his limbs, d—mn his soul,
D—mn his soul, d—mn his limbs!
With Stormont's curs'd din,
Hark! Carlisle chimes in;
D—mn *them;* d—mn all the partners of their sin;
D—mn them, beyond what mortal tongue can tell;
Confound, sink, plunge them all to deepest, blackest Hell!" †

* "I am told that a scoundrel of a potter, one Mr. Wedgwood, is making 10,000 vile utensils, with a figure of Mr. Pitt in the bottom; round the head is to be a motto,

We will spit
On Mr. Pitt,

and *other such* d—mn'd rhymes, suited to the use of the different vessels."

† Rolliad, p. 321. 22d edition.

CHAP. CLXI.

Descent of his honours.

I have only further to state that Lord Chancellor Thurlow dying without legitimate issue, his first title of Baron Thurlow of Ashfield became extinct, and that his second of Baron Thurlow of Thurlow, in the county of Suffolk, under a limitation in the patent by which it was created, descended to his nephew, the eldest son of his brother the Bishop of Durham, the father of the present highly respected head of the family.*

Regret that Thurlow did not write his own Life.

I cannot conclude this Memoir without expressing deep regret that Thurlow himself had not dedicated a portion of his leisure to the task of writing an account of his own career, and of the times in which he lived. Considering the events which he had witnessed, the scenes in which he had personally mixed, the eminent men with whom he had been familiar, and his powers of observation and of description, what an interesting work he might have left to us! Born in the period of universal tranquillity which followed the peace of Utrecht,—he could remember the civil war which rendered it for some time doubtful whether the nation was to continue under the constitutional rule of the House of Brunswick,—or the legitimist doctrine of hereditary right was to prevail by the restoration of the Stuarts. He could have told us the hopes and fears which prevailed on the advance of Prince Charles and his Highlanders to Derby, and the varying joy and consternation produced by the news of the victory at Culloden.—He might have contrasted the gloom in the public mind from the disappointments and disasters of the war terminated by the treaty of Aix-la-Chapelle with the popular exultation and enthusiasm arising from the capture of Quebec, and the other glories of the administration of Chatham.—Himself playing an important part soon after the commencement of the reign of George III., he might have explained to us the new policy of the Court, and made us better acquainted than we shall ever be with the short-lived administrations and factious movements which distracted the realm from the fall of Lord Bute till the premiership of Lord North.—Thence he could have laid bare to us the

* Grandeur of the Law, p. 142.

infatuated councils by which the empire was dismembered, and he might have disclosed his matured sentiments on the errors which were committed, and the line of policy which might have saved the country from the calamities by which it was nearly overwhelmed.—What an account he might have given us of his position in the Rockingham cabinet, and the diversion he had, surrounded with Whigs, in playing off one section of them against another, and preparing the return of Tory domination!—What an agreeable variety might have been presented to us when he was not only in opposition, bnt out of office, during the Coalition government—remaining still the secret adviser of the sovereign!—Then would have come the defeat of the Coalitionists,—with the mitigation of his triumph in finding himself under a boy statesman who professed a respect for public liberty, and was actually disposed to reform the law and the state.—Next would have appeared their mutual manœuvres for "tripping up the heels" of each other.—But, oh! what "Confessions" might our autobiographer have made when he arrived at the Regency!—favouring us with the details of his double negotiations,—and informing us of the process whereby he had tears at his command at the sight or sound of royal suffering,—which is the true version of the story of his being detected by the disappearance of his hat,—and whether he heard from the woolsack the prophecy uttered by Wilkes, sitting on the steps of the throne, as to the catastrophe which was to happen before he could be "forgotten."—We should have known who communicated to him the astounding intelligence that he was dismissed; and we should have seen his towering indignation when he found that the Master who he thought valued him so highly threw him, like a worthless weed, away.—His opinion of his brother Peers, both while he presided over them and when he became the lowest in rank among them, would have been particularly racy.—He would not have felt himself at liberty to publish to the world all he had observed of the Prince of Wales, and other members of the royal family; but, without indiscreet disclosures, he might have given us a view of the Court of England at the end of the eighteenth and beginning of the

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nineteenth century which would have been highly instructive.—His private opinion of Hastings would have been curious,—and we should have been still more desirous to learn his real sentiments of the French Revolution, and his anticipations of the victor of Marengo, whom he lived to see elevated to the office of Chief Consul.—After all, the most valuable chapters would have been those wherein he introduced the great literary characters of his age, and narrated the different "rounds" in his intellectual combats with them, compelling Samuel Johnson to declare, that when he was to meet Thurlow he should wish to know a day or two before, that he might prepare for the encounter.—Indulging in a satirical vein, the homage paid to Mrs. Hervey from the hope of benefiting by his legal and ecclesiastical patronage might have afforded a topic still more fruitful.—I make no doubt, at the same time, that if he had done justice to himself, he would have given us fresh reason to admire not only the vigour of his understanding, but the warmth of his affections; and some parts of his character and conduct which appear to us censurable or equivocal might have been cleared up and vindicated.

I am painfully conscious that this Memoir of him, notwithstanding the pains I have bestowed upon it, is very imperfect; and my only consolation is, that, feeling the awful responsibility cast upon me to guard public and private morality, and to do equal justice to the dead and to the living, I have sincerely striven to obey the precept which biographers ought to reverence as if it were found in holy writ: "Nothing extenuate, nor set down aught in malice."—I am afraid I may still have to appeal to my own consciousness of impartiality from the censures of friends and partizans, when I shall have finished my undertaking with the Lives of Loughborough, Erskine, and Eldon.*

Lord Kenyon's Journal.

* I have been kindly favoured by my friend, the present Lord Kenyon, with a sight of a Journal kept by his distinguished father, in a succession of Almanacks. I lay before the reader a few of the most interesting passages, which throw considerable light on the differences between Thurlow and Pitt,—on the transactions connected with the King's illness in 1788–9,—and on the terms on which Thurlow lived with several of his eminent contemporaries:—

"1784. March 24.—Last night Lord Chancellor's house broken into, and

Great Seal stolen. Sent for by Lord Chancellor. With Earl Gower, President of Council, to give orders in consequence. Drew Proclamation for prorogation of parliament. 25. Searching Council Books for precedents in consequence of Great Seal being stolen, and ordering new one. 28. With the Chancellor and Mr. Pitt about Mastership of Rolls, which I promised (*reluctante*) to Mr. Pitt to accept. The Chancellor much displeased he had not been consulted on law arrangements, and thought Chester and Attorney Generalship too much for Arden. 31. Dined with Lord Chancellor, and sworn in Master of the Rolls — kissed the King's hand. April 1. Drawing-room — kissed the Queen's hand.

"1786. April. — Chancellor very ill. Held several seals for him. He had dreadful hiccup. Promised to be his Executor if he died — which he said gave him the greatest comfort. July 15. I have done the business of the Court of Chancery from 26th April to this day, on account of my excellent and noble friend's indisposition. Nov. 22. Breakfasted with Lord Chancellor, when he talked very much to me about office of Chief Justice of King's Bench, and said he should be under difficulties to find a proper person if I persisted in refusing it, and named Eyre and Buller. 26. Mr. Justice Buller dined with us. He expressed his most earnest wish that I should take the King's Bench, if he was not to have it, and said he would rather be under me than any other man. He expressed his dislike of Baron Eyre. 27. Lord Chancellor sent to me upon his receiving a letter from Lord Mansfield desiring to resign the office of Chief Justice. The Chancellor again proposed to name me to the King, and said that the public looked to me as successor, and that he thought neither Eyre nor Buller would be approved by people in general. Dec. 2. Dined with Mr. Pitt by his desire, when he pressed me to take the office of Chief Justice of King's Bench, and wished I should reconsider the matter. 12. With Mr. Pitt in the evening, when I promised him to accept the office of Chief Justice of the King's Bench.

"1787. Feb. 6. Dined with Mr. Pitt, when he agreed Mr. Serjeant Grose should be a Judge of King's Bench at my recommendation. March 18. Sat great part of the week for Lord Chancellor, who was busy in the House of Lords. [Here follows an extract from a newspaper.] 'Dec. 8. The resignation of Lord Mansfield, *very much to his honour*, is to be delayed no longer. Sir Loyd Kenyon, of course, succeeds — indisputably with more learning than any man in the kingdom! — and as certainly not more learned than intrepid and honourable.'

"1788. Feb. I sat some part of last term, and after the term, for Lord Chancellor, engaged at Hastings's trial. April 19. At Kenwood, with Lord Mansfield, in consequence of a letter from him about his intended resignation. He expressed great kindness for me. 23. At Levee. The King expressed great pleasure on his intention that I should succeed Lord Mansfield — and spoke long to me, in a most gracious manner. June 6. At Levee. Kissed King's hand on being named Chief Justice of King's Bench, and created a peer. Mr. Pitt carried me in his coach, and introduced me. 9. Took leave of the Temple. Sergeant's motto, QUID LEGES SINE MORIBUS. 11. Presided the first time in King's Bench. 18. The Chancellor much dissatisfied about law arrangements. 19. With Mr. Pitt, by his desire, on the great coolness between him and the Chancellor, on Arden being made Master of the Rolls against the Chancellor's inclination — advised him to see the Chancellor. Nov. 7. Dined with the Lord Chancellor, who was just come from the Prince of Wales, who had sent for him to Windsor on account of the King's alarming state of mind. Had much conversation with the Chancellor as to what was to be done if the illness continued — Regency, &c. 9. The Chancellor sent for me again this day to consult about the public affairs, he having just had a letter from Dr. Warren — 'Delirium sine febre.' 10. Breakfasted with Lord Chancellor, who had been yesterday at Windsor by the Prince's desire, and had much conversation with the Prince. With Mr. Pitt, by his desire, to converse on the state of public affairs. 29. Dined at Mr. Pitt's. Lord Chancellor, Duke of Richmond, Lords Stafford, Chatham, Carmarthen, Weymouth, Syd-

ney, Hawkesbury — consulting on public affairs. The King removed this day from Windsor to Kew. Dec. 1. Dined with Marquis of Stafford — same company as at Mr. Pitt's, with addition of Earl Camden. Signed a paper with the Cabinet Ministers, requesting the Queen to take upon her the management of the King's person during his illness. 2. Dined at Lord Sydney's — Lord Chancellor, &c. — consulting about what was to be done at Privy Council, and in Parliament. 3. At Privy Council examining Physicians. 4. Parliament met on adjournment. Dined at Lord Chancellor's, with Marquis of Stafford. Much confidential conference, wherein the Marquis and I agreed in our wishes about the Chancellor's conduct. 7. Lord Chancellor with me about public affairs. 8. Dined at Lord Chancellor's. He in very ill humour with Mr. Pitt. I endeavoured to soothe him, and stated the impropriety of thinking of private quarrels in this crisis of public business. 12. Dined with the Lord Chancellor, who had been this day with the King at Kew.

"1789. Feb. 3. At Cabinet at Lord Chancellor's, settling Regency Bill. Mr. Pitt, Lord Stafford, Speaker, Attorney and Solicitor Generals, &c. 20. Dined with the Chancellor, who had been at Kew with the King and with the Prince. March 8. With the King at Kew by his command. I had a long private conference. He delivered me many of his private papers to take home and consider for him — treated me most graciously. N. B. At this audience he said to Lord K., 'Frederick only voted against us once — did he?' Lord K. answered, 'your Majesty must be aware to what trials one in his situation is exposed.' 'Very true! very true!' he replied. 24. With Mr. Pitt to endeavour, if possible, to remove some of the grounds of shyness between him and Lord Chancellor. Nov. 26. With Secretary Grenville. Read from him the King's commands to endeavour to settle differences between Lord Chancellor and Mr. Pitt.

"1790. Jan. 21. Sat Speaker — opening Session, Lord Chancellor having the gout. 25. Attended Privy Council — Frith's case — throwing stone at the King on his going to open parliament — agreed to commit him for high treason, according to opinions communicated from Chancellor and Earl of Mansfield — absent from indisposition. March 8. Prince of Wales's levee. To Bath. Continually with Lord Chancellor. Breakfast and dinner — and receiving him and his daughters.

"1791. March 24. With Lords Grenville and Dundas about Scotch Peers' election. 25. Breakfasted with Lord Chancellor — persuaded him to confer with Lord Grenville on public measures. Sept. Visit from Lord Chancellor and two daughters, at Gredington.

"1792. April 27. With my afflicted friend the Lord Chancellor, who heard of Caroline's elopement to Scotland. He made his will, and delivered it to me as his Executor. His daughter Catharine with us several days. 17. With Mr. Pitt, at his request, when he informed me that in consequence of the Chancellor's opposing his measures he had mentioned to the King that one must go out, and the Chancellor was to do so. With the Lord Chancellor the same evening to hear the like. June 1. With Mr. Pitt about the Great Seal. He desired me to be First Commissioner. 15. Parliament prorogued. Chancellor resigned Great Seal. Eyre, Ashurst, Wilson, Commissioners. 22. Lord Thurlow and daughters, Judge Buller, Solicitor General Scott, and son, dined with us. 26. Dined at Lord Thurlow's — three Commissioners of Great Seal, and Solicitor General dined there. July 1. Lord Thurlow and daughters Catharine and Mary dined with us. 16. Lord Thurlow, Erskine, Scott, &c., dined with us. Dec. 13. Parliament met. Sat Speaker. Thurlow came home with me to dinner."

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